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A PRACTICAL GUIDE

TO

MAKING AND PROVING WILLS

AND

OBTAINING GRANTS OF LETTERS OF ADMINISTRATION,

IN ACCORDANCE WITH THE ACTS OF PARLIAMENT AND RULES OF LAW;

WITH

FORMS OF AFFIDAVITS USED IN THE REGISTRIES OF THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE;

TO WHICH IS ADDED

INFORMATION REGARDING THE DUTIES OF EXECUTORS AND ADMINISTRATORS, AND HINTS AS TO THE DISTRIBUTION OF ESTATES OF DECEASED PERSONS;

BY

CORRIE HUDSON,

OF THE LEGACY AND SUCCESSION DUTY OFFICE,

AUTHOR OF "A PRACTICAL GUIDE TO THE PAYMENT OF LEGACY AND SUCCESSION DUTIES."

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PREFACE.

SINCE the publication, in the years 1859 and 1860, of my father's two works, "Plain Directions for Making Wills," and "The Executor's Guide," so many changes have taken place, not only in the law, but in the practice of the Probate Court, that I am induced to believe the information contained in the present volume will not be considered a work of supererogation.

I am aware that there are many treatises on these subjects, varying in size and importance between the well-known work of Mr. Vaughan Williams and those by other writers of less note; but I still venture to hope that the information contained in this volume will be found useful, and sufficiently practical in character to be acceptable to the general practitioner.

The manner in which I have treated the two subjects somewhat resembles in plan my former work, "The Practical Guide to the Payment of Legacy and Succession Duties;" and although forming the subject of separate works by my father, I have thought it more convenient to combine them especially as they are so intimately connected.

I take this opportunity of thanking Mr. Layton, who assisted me in my former work, for many valuable hints which I have taken advantage of in the composition of this volume.

In conclusion, I beg leave to assure the reader that no pains have been spared to make the work perfect as a "Practical Guide;" but, at the same time, should any member of the profession be induced to offer any suggestions for improvement, they will be received with every consideration.

CORRIE HUDSON.

LEGACY DUTY OFFICE,
SOMERSET HOUSE,
1*st September*, 1876.

INTRODUCTION.

It will always be a question whether that is the better law which enables a man to leave the whole of his property in any way he may think proper, as in this country; or that which restricts him to the disposition of part of it only, as in France, where no one is allowed to disinherit his child or leave his wife to the cold charity of her friends. Whatever opinion may be entertained on this point, it is evidently to the advantage of society in this country that persons should avail themselves of this unrestricted privilege rather than idly leave the division of their property to the operation of the law. It is true that, in some few instances, cases of hardship, and even cruelty, have occurred from the abuse of this privilege; but, upon the whole, it is manifest that much oftener have hardship and misery arisen from a man dying intestate, and thus (in consequence of the eldest son succeeding to his real estate as the heir-at-law) allowing the personal estate to be absorbed in the payment of his debts, leaving his widow and younger children totally unprovided for, than from gratifying his temper or exercising undue partiality by bequests in favour of one particular child.

It is not so very long ago that a man was considerably restricted in this country in the disposition of his property;

for, prior to the passing of the 32 and 34 Henry VIII., a wife and children could not be debarred from taking a certain share of the estate of the husband, and he could only bequeath the remainder after these shares had been put on one side; and even if there were no wife or child, he was bound to leave a portion of his estate to the Church.

Although the Act before alluded to, and those subsequent—*i.e.*, 4 and 5 William and Mary, cap. 2; 7 and 8 William III., cap. 38; and 2 and 3 Anne—extended the powers of testators, it was not until the passing of the "Wills Act," 1 Victoria, cap. 26, that perfect freedom as to the disposition by will of all kinds of property could be said to have become the law.

This statute enacts: "That it shall be lawful for every person to devise, bequeath, and dispose of by his will, executed in manner hereinafter required, all real and personal estate which he shall be entitled to, either at law or in equity, at the time of his death," &c. Seeing, then, that by the law of this country the onus is thrown upon the parent to distribute the property amongst the family in a manner most conducive to its benefit, it is the duty of every person who has property to leave, and who does not shrink from the responsibilities attaching to it, to make a will: and the first object of this book is to help him to do so in conformity with the law; next, to instruct his executors in the task of proving his will and distributing his property in accordance with it; and lastly, to afford the necessary information to those persons concerned in distributing the property of those who die without having made a will—in other words, intestate.

It is right, however, to inform the reader that, in cases where very large estates are intended to be disposed of, or where any complication exists, no will should be made or property administered without professional assistance.

ON MAKING WILLS.

CHAPTER I.

A WILL being merely the expression in writing of the mode in which a person desires his property to be divided, the more simple and concise it is in its construction the better. There is no need for the use of technical or legal terms, but as it is absolutely necessary that the will should be made in conformity with the law, without which not only a bequest but even the will itself might be void, those sections of the Act, 1 Vict., cap. 26, generally denominated the "Wills Act," which particularly require attention, are here inserted with a few remarks upon each.

An Act for the Amendment of the Laws with respect to Wills. —*3rd July*, 1837:

1st Vict., c. 2 Section 1. Meaning of certain words in this Act:

"Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Words and Expressions hereinafter mentioned, which in their ordinary Signification have a more confined or a different Meaning, shall in this Act, except where the Nature of the Provision or the Context of the Act shall exclude such Construction, be interpreted as follows; (that is to say,) the Word "Will" shall extend to a Testament, and to a "Will;"

1st Vic., 1.

Codicil, and to an Appointment by Will or by Writing in the Nature of a Will in exercise of a Power, and also to a Disposition by Will and Testament or Devise of the Custody and Tuition of any Child, by virtue of an Act passed in the Twelfth Year of the Reign of King *Charles* the Second, intituled *An Act for taking away the Court of Wards and Liveries, and Tenures* in capite *and by Knights Service and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof*, or by virtue of an Act passed in the Parliament of *Ireland* in the Fourteenth and Fifteenth Years of the Reign of King *Charles* the Second, intituled *An Act for taking away the Court of Wards and Liveries and Tenures* in capite *and by Knights Service*, and to any other Testamentary Disposition; and the Words "Real Estate" shall extend to Manors, Advowsons, Messuages, Lands, Tithes, Rents, and Hereditaments, whether Freehold, Customary Freehold, Tenant Right, Customary or Copyhold, or of any other Tenure, and whether corporeal, incorporeal, or personal, and to any undivided Share thereof, and to any Estate, Right, or Interest (other than a Chattel Interest) therein; and the Words "Personal Estate" shall extend to Leasehold Estates and other Chattels Real, and also to Monies, Shares of Government and other Funds, Securities for Money (not being Real Estates), Debts, Choses in Action, Rights, Credits, Goods, and all other Property whatsoever which by Law devolves upon the Executor or Administrator, and to any Share or Interest therein; and every Word importing the Singular Number only shall extend and be applied to several Persons or Things as well as One Person or Thing; and every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male."

12 Car. 2. c. 24.

14 and 15 C . .

"Real Estate;"

"Personal Estate;"

Number.

Gender.

This section conveys a more extended meaning to the terms "will," "real estate," "personal estate," than they previously bore, or which in their ordinary signification they do bear, so that a gift by a man of his "real estate" shall be held to include not only his freehold, copyhold, and all other interest appertaining thereto, but also any other disposable interest which he may have had in it, and his personal estate shall extend to all his property which by law devolves upon his Executor or Administrator.

"II. And be it further enacted, That an Act passed in the Thirty-second Year of the Reign of King *Henry* the Eighth, intituled *The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land*; and also an Act passed in the Thirty-fourth and Thirty-fifth Years of the Reign of the said King *Henry* the Eighth, intituled *The Bill concerning the Explanation of Wills;* and also an Act passed in the Parliament of *Ireland* in the Tenth Year of the Reign of King *Charles* the First, intituled *An Act how Lands, Tenements, etc. may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;* and also so much of an Act passed in the Twenty-ninth Year of the Reign of King *Charles* the Second, intituled *An Act for Prevention of Frauds and Perjuries*, and of an Act passed in the Parliament of *Ireland* in the Seventh Year of the Reign of King *William* the Third, intituled *An Act for Prevention of Frauds and Perjuries*, as relates to Devises or Bequests of Lands or Tenements, or to the Revocation or Alteration of any Devise in Writing or any Lands, Tenements, or Hereditaments, or any Clause thereof, or to the Devise of any Estate *pur autre vie*, or to any such Estate, being Assets, or to Nuncupative Wills, or to the Repeal, altering, or changing of any Will in Writing concerning any Goods or Chattels or Personal Estate, or any Clause, Devise, or Bequest therein; and also so much of an Act passed in the Fourth and Fifth Years of the Reign of Queen *Anne*, intituled *An Act for the Amendment of the Law and the better Advancement of Justice*, and of an Act passed in the Parliament of *Ireland* in the Sixth Year of the Reign of Queen *Anne*, intituled *An Act for the Amendment of the Law and the better Advancement of Justice*, as relates to Witnesses to Nuncupative Wills; and also so much of an Act passed in the Fourteenth Year of the Reign of King *George* the Second, intituled *An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the Twenty-ninth Year of the Reign of King* Charles *the Second, intituled, 'An Act for Prevention of Frauds and Perjuries,'* as relates to Estates *pur autre vie*; and also an Act passed in the Twenty-fifth Year of the Reign of King *George* the Second, intituled *An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that part of* Great Britain *called* England, *and in His Majesty's Colonies and Plantations in* America, except so far as relates to His

Section 2. Repeal of the Statutes of Wills, 32 H.8, c. 1, and 34 & 35 H. 8, c. 5.

10 Car. 1, Sess. 2, c. 2, (I.)

Secs. 5, 6, 1 19, 20, 21 & 22 of the Statute of Frauds, 29 Car. 2, c. 3; 7 W. 3, c. 12. (I.)

Sec. 14 of 4 & 5 Anne, c. 16.

6 Anne, c. 10, (I.)

Sec. 9 of 14 Geo. 2, c. 20.

25 Geo. 2, c. 6, (except as to Colonies).

1st Vict., cap. 26. 25 G. 2, c. 11, (I.)

55 G. 3. c. 192.

Majesty's Colonies and Plantations in *America;* and also an Act passed in the Parliament of *Ireland* in the same Twenty-fifth Year of the Reign of King *George* the Second, intituled *An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestations of Wills and Codicils concerning Real Estates;* and also an Act passed in the Fifty-fifth Year of the Reign of King *George* the Third, intituled *An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will,* shall be and the same are hereby repealed, except so far as the same Acts or any of them respectively relate to any Wills or Estates *pur autre vie* to which this Act does not extend."

This Section repeals all former Statutes on the subject of bequeathing or devising property by will, and thus clears the way for the following sections which prescribe the legal form for such dispositions.

Section 3. All Property may be disposed of by Will,

comprising Customary Freeholds and Copyholds without Surrender and before Admittance, and also such of them as cannot now be devised;

Estates pur autre vie;

"III. And be it further enacted, That it shall be lawful for every Person to devise, bequeath, or dispose of, by his Will executed in manner hereinafter required, all Real Estate and all Personal Estate which he shall be entitled to, either at Law or in Equity, at the Time of his Death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the Heir at Law or Customary Heir of him, or, if he became entitled by Descent, of his Ancestor, or upon his Executor or Administrator; and that the Power hereby given shall extend to all Real Estate of the Nature of Customary Freehold or Tenant Right, or Customary or Copyhold, notwithstanding that the Testator may not have surrendered the same to the Use of his Will, or notwithstanding that, being entitled as Heir, Devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the Want of a Custom to devise or surrender to the Use of a Will or otherwise, could not at Law have been disposed of by Will if this Act had not been made, or notwithstanding that the same, in consequence of there being a Custom that a Will or a Surrender to the Use of a Will should continue in force for a limited Time only, or any other special Custom, could not have been disposed of by Will according to the Power contained in this Act, if this Act had not been made; and also to Estates *pur autre vie,* whether there shall or shall not

be any special Occupant thereof, and whether the same shall be Freehold, Customary Freehold, Tenant Right, Customary or Copyhold, or of any other Tenure, and whether the same shall be a corporeal or an incorporeal Hereditament; and also to all contingent, executory, or other future Interests in any Real or Personal Estate, whether the Testator may or may not be ascertained as the Person or One of the Persons in whom the same respectively may become vested, and whether he may be entitled thereto under the Instrument by which the same respectively were created or under any Disposition thereof by Deed or Will; and also to all Rights of Entry for Conditions broken, and other Rights of Entry; and also to such of the same Estates, Interests, and Rights respectively, and other Real and Personal Estate, as the Testator may be entitled to at the Time of his Death, notwithstanding that he may become entitled to the same subsequently to the Execution of his Will."

contingent Interests;

Rights of Entry; and Property acquired after Execution of the Will.

This is the general and comprehensive Section of the Act, and makes it lawful for every person competent to do so, "to devise, bequeath, and dispose of in manner hereinafter mentioned, all his real estate and all his personal estate," and this power is extended specially to the disposition of all interests in that kind of property which previously it was necessary to have surrendered to the uses of the will such as "customary freehold, tenant right, customary or copyhold," which he could not otherwise have disposed of, but for the power contained in this Act. Also of "Estates *pur autre vie*," and "contingent interests," and the Section finally declares that the will shall be held to pass any property which the testator may acquire subsequently to the execution thereof, in fact it speaks from the date of the death of the person making it, instead of from the date of the execution thereof, as was the case before the 1st January, 1838.

"VIII. Provided also, and be it further enacted, That no Will made by any married Woman shall be valid, except such a Will as might have been made by a married Woman before the passing of this Act."

Section 8. No Will of a Feme Covert to be valid, except such as might now be made.

1st Vict., cap. 26.

Formerly the law with regard to the right of a married woman to possess or hold property irrespective of her husband might be expressed in the homely phrase "What was the wife's was the husband's, and what was the husband's was his own;" but great changes have taken place of late years in this respect, whereby many disabilities of married women with regard to property have been removed, and this is exemplified more especially in the passing of the 33 and 34 Vic., cap. 93, called "The Married Woman's Property Act," but the law still holds that a married woman cannot dispose of property by will without the consent of her husband, and even when given it requires his consent to the probate. Should, however, the husband die in the lifetime of the wife after she had made a will, such will would be void, as a will made by a wife during coverture does not pass property as against her next of kin unless republished by her during widowhood. A case illustrating this rule was tried on appeal, Willock *v.* Noble and others (L. R., 8 Chancery Appeal, 778), in which a married woman, by her will made in her husband's lifetime, not only disposed of property in exercise of a power of appointment, but went on to give by the same will all the property she might die possessed of. The question before the court was whether the will would operate not only in respect of the property bequeathed in the exercise of the power of appointment, but also in respect of certain property she had acquired after her husband's death. Their lordships affirmed the decision of the court below, declaring the will ineffectual as regards all the property except that over which she had a power of appointment.

So also if a spinster makes a will and afterwards marries, such will (unless a mere exercise of a power of appointment by which her heirs or next of kin are not deprived of any benefit) is void in consequence of the marriage, and does not revive by subsequent widowhood.

A wife may, however, make a will during her husband's

lifetime without his consent for the purpose of disposing of property which she has power to appoint in pursuance of a trust for that purpose, contained either in a settlement or some prior will, but the probate granted to the executor will be limited to the property so appointed, and will be described by the registrar of the court as a grant "limited to the property over which the deceased had a power of appointment."

Section 9. Every Will shall be in Writing, and signed by the Testator in the Presence of Two Witnesses at One Time.

"IX. And be it further enacted, That no Will shall be valid unless it shall be in Writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the Foot or End thereof by the Testator, or by some other Person in his Presence and by his Direction; and such Signature shall be made or acknowledged by the Testator in the Presence of Two or more Witnesses present at the same Time, and such Witnesses shall attest and shall subscribe the Will in the Presence of the Testator, but no Form of Attestation shall be necessary."

Under the old laws it was not absolutely necessary that the will to pass "personal" estate should be either written or signed. Charles Dickens, in one of his tales, describes an ostler making his will on the inside of the lid of an old trunk; such a will would be invalid nowadays, as not only must it be written, but it must be signed by the testator in the presence of two witnesses, who must subscribe the will in his presence. The formalities with regard to a will devising real estate, on the contrary, were much more solemn than now. By a failure to comply with all the terms of this section, many wills have been declared invalid, and it is therefore of the greatest importance that no part of the instructions contained here should be omitted.

In the first place, the will must be in writing, and care should be taken that it is not only written legibly, but also that there should be no alterations, as these latter frequently lead to litigation, and the consequent waste of the estate in costs, but the most important part of this section is with

1st Vict., cap. 26

regard to the signature; this must be by the testator, if possible, in his own handwriting, or if not by some one for him in his presence, and by his direction; and the signature must be made and acknowledged in the presence of the witnesses; and here it is necessary to observe that the number of these must not be less than *two*, otherwise the testamentary document will be void; and again, these two witnesses must sign their names in the presence of the testator, and all must be in such a position that one and all can see each other sign their names. Several cases are given in Williams' treatise on the "Law of Executors," where wills have been declared void in consequence of the testator and the witnesses not having all signed in each other's presence, notably the following—"Moore *v.* King, 3 Curt. 243," in which a testator signed a codicil in the presence of one witness only, his sister, and on a subsequent day another person was requested to add his name as a witness, and although the testator and his sister pointing to their signatures, declared them to be such, it was held by Sir H. J. Fust, that the instrument was not sufficiently attested under the new statute. This section also declares that no form of attestation shall be necessary, still it is always better that there should be such a form in case the Registrars of the Court of Probate require proof, as they occasionally do, of the witnesses' signatures, as well as that of the testator. It will be observed that the signature to the will is to be "at the foot or end thereof." These words led to questions being tried as to whether a will was signed in conformity with the Act when the signature was not actually at the foot but at some distance below it, thus allowing sufficient space to insert fresh matter after the will had been signed; and in order to remove any doubt on this point, the Act 15th Vict. cap. 24 (which obtained the Royal Assent on the 17th June, 1852), entitled "The Wills Act Amendment Act, 1852" was passed, in which the following recital and provision was made:

"Whereas by an Act passed in the First Year of the Reign of Her Majesty Queen *Victoria*, intituled *An Act for the Amendment of the Laws with respect to Wills*, it is enacted, that no Will shall be valid unless it shall be signed at the Foot or End thereof by the Testator, or by some other Person in his Presence, and by his Direction: Every Will shall, so far only as regards the Position of the Signature of the Testator, or of the Person signing for him as aforesaid, be deemed to be valid within the said Enactment, as explained by this Act, if the Signature shall be so placed at or after, or following, or under, or beside, or opposite to the End of the Will, that it shall be apparent on the Face of the Will that the Testator intended to give Effect by such his Signature to the Writing signed as his Will, and that no such Will shall be affected by the Circumstance that the Signature shall not follow or be immediately after the Foot or End of the Will, or by the Circumstance that a blank Space shall intervene between the concluding Word of the Will and the Signature, or by the Circumstance that the Signature shall be placed among the Words of the Testimonium Clause or of the Clause of Attestation, or shall follow or be after or under the Clause of Attestation, either with or without a blank Space intervening, or shall follow or be after, or under, or beside the Names or One of the Names of the subscribing Witnesses, or by the Circumstance that the Signature shall be on a Side or Page or other Portion of the Paper or Papers containing the Will whereon no Clause or Paragraph or disposing Part of the Will shall be written above the Signature, or by the Circumstance that there shall appear to be sufficient Space on or at the Bottom of the preceding Side or Page or other Portion of the same Paper on which the Will is written to contain the Signature; and the Enumeration of the above Circumstances shall not restrict the Generality of the above Enactment; but no Signature under the said Act or this Act shall be operative to give Effect to any Disposition or Direction which is underneath or which follows it, nor shall it give Effect to any Disposition or Direction inserted after the Signature shall be made."

15 Vict. c. 24.

When Signature to a Will shall be deemed valid.

"The Provisions of this Act shall extend and be applied to every Will already made, where Administration or Probate has not already been granted or ordered by a Court of com-

Section 2. Act to extend to certain Wills already made.

petent Jurisdiction in consequence of the defective Execution of such Will, or where the Property, not being within the Jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some Person or Persons claiming to be entitled thereto in consequence of the defective Execution of such Will, or the Right thereto shall not have been decided to be in some other Person or Persons than the Persons claiming under the Will, by a Court of competent Jurisdiction, in consequence of the defective Execution of such Will."

Section 3. Interpretation of "Will."

"The Word 'Will' shall in the Construction of this Act be interpreted in like Manner as the same is directed to be interpreted under the Provisions in this Behalf contained in the said Act of the First Year of the Reign of Her Majesty Queen *Victoria*."

The consideration of the Wills Act is now continued.

1 Vic., c. 26, Section 10. Appointments by Will to be executed like other Wills, and to be valid, although other required Solemnities are not observed.

"X. And be it further enacted, That no Appointment made by Will, in exercise of any Power, shall be valid, unless the same be executed in manner herein-before required; and every Will executed in manner herein-before required shall, so far as respects the Execution and Attestation thereof, be a valid Execution of a Power of Appointment by Will, notwithstanding it shall have been expressly required that a Will made in exercise of such Power should be executed with some additional or other Form of Execution or Solemnity."

This refers to Wills made to dispose of property under a power contained in some other instrument such as a Marriage Settlement or Will, and the same remarks apply here as are contained in the observations on the previous Sections 8 and 9.

Section 11. Soldiers and Mariners' Wills excepted.

"XI. Provided always, and be it further enacted, That any Soldier being in actual Military Service, or any Mariner or Seaman being at Sea, may dispose of his Personal Estate as he might have done before the making of this Act."

Section 12. Act not to affect certain Provisions of 11 G. 4, &

"XII. And be it further enacted, That this Act shall not prejudice or affect any of the Provisions contained in an Act passed in the Eleventh Year of the Reign of His Majesty King *George* the Fourth and the First Year of the Reign of

His late Majesty King *William* the Fourth, intituled *An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy*, respecting the Wills of Petty Officers and Seamen in the Royal Navy, and Non-commissioned Officers of Marines, and Marines, so far as relates to their Wages, Pay, Prize Money, Bounty Money, and Allowances, or other Monies payable in respect of Services in Her Majesty's Navy."

1 W. 4, c. 20, with respect to Wills of Petty Officers and Seamen and Marines.

Sections 11 and 12 refer to Wills made by Soldiers on actual service and Marines, but they have been altered by a subsequent Act passed on the 29th June, 1865 (28 and 29 Vic. cap. 72) entitled *The Navy and Marines (Wills) Act*, 1865, which provides that—

Sections & 12.

"2. In this Act—

28 & 29 Vict. cap. 72. Interpretation of Terms.

The Term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral:

The Term "Seaman or Marine" means a Petty Officer or Seaman, Non-commissioned Officer of Marines or Marine, or other Person forming Part in any Capacity of the Complement of any of Her Majesty's Vessels, or otherwise belonging to Her Majesty's Naval or Marine Force, exclusive of Commissioned, Warrant, and Subordinate Officers, and Assistant Engineers, and of Kroomen.

"3. A Will made after the Commencement of this Act by any Person at any Time previously to his entering into Service as a Seaman or Marine shall not be valid to pass any Wages, Prize Money, Bounty Money, Grant, or other Allowance in the Nature thereof, or other Money payable by the Admiralty, or any Effects or Money in charge of the Admiralty.

Will made before entry ineffectual as to Wages, &c.

"4. A Will made after the Commencement of this Act by any Person while serving as a Seaman or Marine shall not be valid for any purpose if it is written or contained on or in the same Paper, Parchment, or Instrument with a Power of Attorney.

Will invalid if combined with Power of Attorney.

"5. A Will made after the Commencement of this Act by any Person while serving as a Seaman or Marine, or when he has ceased so to serve, shall not be valid to pass any Wages, Prize Money, Bounty Money, Grant, or other

Regulations for Wills of Seamen, &c., as to Wages, &c.

Allowance in the Nature thereof, or other Money payable by the Admiralty, or any Effects or Money in charge of the Admiralty, unless it is made in conformity with the following Provisions:—

"(1.) Every such Will shall be in Writing and be executed with the Formalities required by the Law of *England* in the Case of Persons not being Soldiers in actual Military Service or Mariners or Seamen at Sea:

"(2.) Where the Will is made on board One of Her Majesty's Ships, One of the Two requisite attesting Witnesses shall be a Commissioned Officer, Chaplain, or Warrant or Subordinate Officer belonging to Her Majesty's Naval or Marine or Military Force:

"(3.) Where the Will is made elsewhere than on board One of Her Majesty's Ships, One of the Two requisite attesting Witnesses shall be such a Commissioned Officer or Chaplain or Warrant or Subordinate Officer as aforesaid, or the Governor, Agent, Physician, Surgeon, Assistant Surgeon, or Chaplain of a Naval Hospital at home or abroad, or a Justice of the Peace, or the Incumbent, Curate, or Minister of a Church or Place of Worship in the Parish where the Will is executed, or a *British* Consular Officer, or an Officer of Customs,, or a Notary Public:

A Will made in conformity with the foregoing Provisions shall, as regards such Wages, Money, or Effects, be deemed to be well made for the Purpose of being admitted to Probate in *England;* and the Person taking out Representation to the Testator under such Will shall exclusively be deemed the Testator's Representative with respect to such Wages, Money, or Effects.

As to Wills made by Prisoners of War.

"6. Notwithstanding anything in this or any other Act, a Will made after the Commencement of this Act by a Seaman or Marine while he is a Prisoner of War shall (as far as regards the Form thereof) be valid for all Purposes if it is made in conformity with the following Provisions:—

"(1.) If it is in Writing and is signed by him, and his Signature is made or acknowledged by him in the Presence of, and is in his Presence attested by, One Witness, being either a Commissioned Officer or

Chaplain belonging to Her Majesty's Naval or Marine or Military Force, or a Warrant or Subordinate Officer of Her Majesty's Navy, or the Agent of a Naval Hospital, or a Notary Public:

"(2.) If the Will is made according to the Forms required by the Law of the Place where it is made:

"(3.) If the Will is in Writing and executed with the Formalities required by the Law of *England* in the Case of Persons not being Soldiers in actual Military Service or Mariners or Seamen at Sea.

Payment under Will not in conformity with Act.

"7. Notwithstanding anything in this Act, in case of a Will made after the Commencement of this Act by any Person while serving as a Marine or Seaman, and being either in actual Military Service or a Mariner or Seaman at Sea, the Admiralty may pay or deliver any Wages, Prize Money, Bounty Money, Grant or other Allowance in the Nature thereof, or other Money payable by the Admiralty or any Effects or Money in charge of the Admiralty, to any Person claiming to be entitled thereto under such Will, though not made in conformity with the Provisions of this Act, if, having regard to the special Circumstances of the Death of the Testator, the Admiralty are of opinion that Compliance with the Requirements of this Act may be properly dispensed with."

This Act appears to have been passed for the purpose of protecting sailors in the Royal Navy and marines, who are proverbially an easy and confiding as well as ignorant class, from the rapacious and unscrupulous people who surround them at the several ports of the Kingdom; and this will readily be seen in reference to sections 3 and 4, the latter of which specially declares that no will of a sailor in the Royal Navy or marine shall be valid if written on any document in which is contained a power of attorney.

Sections 3 & 4.

Although any will made by a seaman or marine in conformity with the provisions of the 1 Vic., cap. 26, will be sufficient to pass any property other than "wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty," still, in order to obtain

1st Vic., cap. 26.

possession of the particular property above enumerated, it is declared necessary by the 5th section that the witnesses to his will shall be two of such persons as are particularly named in the second and third parts of that section, unless the Admiralty shall think proper to dispense with these requirements, which under the 7th section they have power to do, otherwise it will be necessary for the next of kin of the deceased to take out a grant of letters of administration in order to obtain from the Admiralty such property as that particularly specified in section 3.

1st Vic., cap. 26. Publication not to be requisite.

"XIII. And be it further enacted, That every Will executed in manner herein-before required shall be valid without any other Publication thereof."

A will once signed, provided it be in accordance with the terms of the previous sections, does not require any further publication.

Will not to be void on account of Incompetency of attesting Witness.

"XIV. And be it further enacted, That if any Person who shall attest the Execution of a Will shall at the Time of the Execution thereof or any Time afterwards be incompetent to be admitted a Witness to prove the Execution thereof, such Will shall not on that Account be invalid."

The incompetency of an attesting witness will not interfere with the validity of a will, so that a will witnessed by a felon would, if all the other provisions of the Act had been complied with, be perfectly valid.

Gifts to an attesting Witness to be void.

"XV. And be it further enacted, That if any Person shall attest the Execution of any Will to whom or to whose Wife or Husband any beneficial Devise, Legacy, Estate, Interest, Gift, or Appointment, of or affecting any Real or Personal Estate (other than and except Charges and Directions for the Payment of any Debt or Debts), shall be thereby given or made, such Devise, Legacy, Estate, Interest, Gift, or Appointment shall, so far only as concerns such Person attesting the Execution of such Will, or the Wife or Husband of such Person, or any Person claiming under such Person or Wife or Husband, be utterly null and void, and such Person so

attesting shall be admitted as a Witness to prove the Execution of such Will, or to prove the Validity or Invalidity thereof, notwithstanding such Devise, Legacy, Estate, Interest, Gift, or Appointment mentioned in such Will."

This is a very important section, and inattention to it may entirely defeat the kindly wishes of the testator; for should a person, by his will, have left a legacy to a friend or relative, and at the same time have got that legatee to witness his, the testator's, signature to the will, the legacy will be void, and so it will even if the wife or husband of the legatee is a witness to the signature of the testator, except the marriage of the legatee to one of the witnesses should be subsequent to the publication of the will, in which case the bequest is held to be a valid one.

Sections 16 and 17 declare that both a creditor and executor may witness a will without invalidating the claim for the debt of the one, or the appointment as executor of the other.

Sections 16 & 17.

"XVIII. And be it further enacted, That every Will made by a Man or Woman shall be revoked by his or her Marriage (except a Will made in exercise of a Power of Appointment, when the Real or Personal Estate thereby appointed would not in default of such Appointment pass to his or her Heir, Customary Heir, Executor, or Administrator, or the Person entitled as his or her next of Kin, under the Statute of Distributions)."

Will to be revoked by Marriage.

Those who, having an objection to make a will, have at last been persuaded to do so, would naturally suppose that no subsequent proceedings would interfere with the validity of the testament which they have made, but such is not the case, for it is enacted by this section, "That any subsequent marriage shall revoke such will," unless the same has been made merely in exercise of a power of appointment where the property appointed would not have passed to the testator's own heirs or next of kin had he failed to exercise it; and it has been held that a will made, even in contemplation of a marriage (which subsequently took place), was invalid.

1st Vic., cap. 26. No Will to be revoked by Presumption.

"XIX. And be it further enacted, That no Will shall be revoked by any Presumption of an Intention, on the Ground of an Alteration in Circumstances."

Although by the previous section it is enacted that a subsequent marriage shall revoke a will, under this section no will can be revoked "by presumption of an intention only," *i.e.*, should a testator make his will and leave his property to his wife and children, naming them, and subsequently, that is, between the date of his will and the date of his death, more children have been born to him, although the fair presumption would be that he intended to alter his will in accordance with the altered circumstances of his family, but died before doing so, this section would entirely prevent any attempt to put the will aside on this ground only.

No Will to be revoked but by another Will or Codicil, or by a Writing executed like a Will, or by Destruction.

"XX. And be it further enacted, That no Will or Codicil, or any Part thereof, shall be revoked otherwise than as aforesaid, or by another Will or Codicil executed in manner hereinbefore required, or by some Writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the Testator, or by some person in his presence and by his direction, with the intention of revoking the same."

A will can only be revoked (except under the circumstances mentioned in section 18) by the person making a subsequent will, or by a codicil properly executed or by *thoroughly destroying it*, and this must be done by the testator himself, or by some one in his presence. And here, it may be observed, that if it be desired to destroy a will the more simple mode will be to burn it, or tear off the signature, as simply tearing it across by no means of itself establishes the testator's intention to destroy it, and this intention becomes, after the testator is dead, a very difficult thing to prove. No destruction of a will by any person except in the testator's presence, will revoke it, even though it be done at the testator's request.

"XXI. And be it further enacted, That no Obliteration, Interlineation, or other Alteration made in any Will after the Execution thereof shall be valid or have any Effect, except so far as the Words or Effect of the Will before such Alteration shall not be apparent, unless such Alteration shall be executed in like Manner as hereinbefore is required for the Execution of the Will; but the Will, with such Alteration as Part thereof, shall be deemed to be duly executed if the Signature of the Testator and the Subscription of the Witnesses be made in the Margin or on some other Part of the Will opposite or near to such Alteration, or at the Foot or End of or opposite to a Memorandum referring to such Alteration, and written at the End or some other Part of the Will."

No Alteration in a Will shall have any Effect unless executed as a Will.

Alterations and obliterations must be signed and witnessed in the margin opposite thereto, or special reference made to them at the end of the will, or the better way would be to note them in the attestation clause thus: "The words 'two hundred' being first struck out in the fifth line of the second page, and the words 'five hundred' interlined between the fourth and fifth lines of said second page, and the word 'twenty' written on erasure on the second line of the third page." If the will is written on more than one sheet of paper the testator should sign his name at the bottom (right hand side) of each page on which the will is written, the witnesses signing on the left hand side, thus preventing the withdrawal of one sheet and the substitution of another.

"XXII. And be it further enacted, That no Will or Codicil, or any Part thereof, which shall be in any Manner revoked, shall be revived otherwise than by the Re-execution thereof, or by a Codicil executed in manner hereinbefore required, and showing an Intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such Revival shall not extend to so much thereof as shall have been revoked before the Revocation of the whole thereof, unless an Intention to the contrary shall be shown."

No Will revoked to be revived otherwise than by Re-execution or a Codicil to revive it.

1st Vic., cap. 26.

A will once revoked cannot be revived, unless it be republished, that is, declared afresh to be the will of the testator, dated, signed anew, and witnessed, and if the will had previously been revoked in part, and then wholly, it is necessary that both revocations should be specified, in order to revive the will in its entirety, as first published, but it is far better to have the will re-written, signed, and witnessed afresh if there be sufficient time to do so.

A Devise not to be rendered inoperative by any subsequent Conveyance or Act.

"XXIII. And be it further enacted, That no Conveyance or other Act made or done subsequently to the Execution of a Will of or relating to any Real or Personal Estate therein comprised, except an Act by which such Will shall be revoked as aforesaid, shall prevent the Operation of the Will with respect to such Estate or Interest in such Real or Personal Estate as the Testator shall have Power to dispose of by Will at the time of his Death."

The intention here is that should a testator, after he has made and executed his will in due form, by a subsequent deed, convey to trustees, or otherwise deal with, certain parts of his real estate or personal estate given by the will, whatever estate or interest in the same property (though of a different description or quantity) may be at his disposal at the time of his death shall pass under his will, notwithstanding the conveyance.

A Will shall be construed to speak from the Death of the Testator.

"XXIV. And be it further enacted, That every Will shall be construed, with reference to the Real Estate and Personal Estate comprised in it, to speak and take effect as if it had been executed immediately before the Death of the Testator, unless a contrary Intention shall appear by the Will."

This section entirely changes the previous law in respect to devises of real estate by will, for as the will "speaks from the death," so the residuary devise disposes not only of the property which was in existence at the date of the execution of the will, but of all after-acquired property up to the date of the death of the testator.

"XXV. And be it further enacted, That unless a contrary Intention shall appear by the Will, such Real Estate or Interest therein as shall be comprised or intended to be comprised in any Devise in such Will contained, which shall fail or be void by reason of the Death of the Devisee in the Lifetime of the Testator, or by reason of such Devise being contrary to Law or otherwise incapable of taking effect, shall be included in the Residuary Devise (if any) contained in such Will."

A Residuary Devise shall include Estates comprised in lapsed and void Devises.

Where the devisee of any specified real estate shall have died in the lifetime of the testator (except in the case of a gift to a child, dealt with by section 33), the property so devised will not pass to the heir-at-law, but will fall to and become included in the residuary devise, if there be one; and thus it is always useful, whether there be any other real estate than that specifically given or not, to insert in the residuary clause the words "real" as well as "personal" estate.

"XXVI. And be it further enacted, That a Devise of the Land of the Testator, or of the Land of the Testator in any Place or in the Occupation of any Person mentioned in his Will, or otherwise described in a general Manner, and any other general Devise which would describe a Customary, Copyhold, or Leasehold Estate if the Testator had no Freehold Estate which could be described by it, shall be construed to include the Customary, Copyhold, and Leasehold Estates of the Testator, or his Customary, Copyhold, and Leasehold Estates, or any of them, to which such Description shall extend, as the Case may be, as well as Freehold Estates, unless a contrary Intention shall appear by the Will."

A general Devise of the Testator's Lands shall include Copyhold and Leasehold as well as Freehold Lands.

A gift of land, without any mention of the amount of the testator's interest therein, will pass all the property coming within that description.

"XXVII. And be it further enacted, That a general Devise of the Real Estate of the Testator, or of the Real Estate of the Testator in any Place or in the Occupation of any Person mentioned in his Will, or otherwise described in

A general Gift shall include Estates over which the

1st Vic., cap. 26. Testator has a general Power of Appointment.

a general Manner, shall be construed to include any Real Estate, or any Real Estate to which such Description shall extend (as the Case may be), which he may have Power to appoint in any Manner he may think proper, and shall operate as an Execution of such Power, unless a contrary Intention shall appear by the Will; and in like Manner a Bequest of the Personal Estate of the Testator, or any Bequest of Personal Property described in a general Manner, shall be construed to include any Personal Estate, or any Personal Estate to which such Description shall extend (as the Case may be), which he may have Power to appoint in any Manner he may think proper, and shall operate as an Execution of such Power, unless a contrary Intention shall appear by the Will."

A general gift by a will shall include property which the testator may have power under another instrument to appoint as he pleases.

A Devise without any Words of Limitation shall be construed to pass the Fee.

"XXVIII. And be it further enacted, That where any Real Estate shall be devised to any Person without any Words of Limitation, such Devise shall be construed to pass the Fee Simple, or other the whole Estate or Interest which the Testator had Power to dispose of by Will in such Real Estate, unless a contrary Intention shall appear by the Will."

A devise of real estate to a person without any words indicating the quantity or kind of estate or interest he is to take in it, is to be held as equivalent to a gift to him in fee simple.

The Words "die without Issue," or "die without leaving Issue," shall be construed to mean die without Issue living at the Death.

"XXIX. And be it further enacted, that in any Devise or Bequest of Real or Personal Estate the Words 'die without Issue,' or 'die without leaving Issue,' or 'have no Issue,' or any other Words which may import either a Want or Failure of Issue of any Person in his Lifetime or at the Time of his Death, or an indefinite Failure of his Issue, shall be construed to mean a Want or Failure of Issue in the Lifetime or at the Time of the Death of such Person, and not an indefinite Failure of his Issue, unless a contrary Intention shall appear by the Will, by reason of such Person having a prior Estate

Tail, or of a preceding Gift, being, without any implication arising from such Words, a Limitation of an Estate Tail to such Person or Issue, or otherwise: Provided, that this Act shall not extend to Cases where such Words as aforesaid import if no Issue described in a preceding Gift shall be born, or if there shall be no Issue who shall live to attain the Age or otherwise answer the Description required for obtaining a vested Estate by a preceding Gift to such Issue."

This section declares that where a testator gives property contingent on a person dying "without issue," or "without leaving issue," or "having no issue," these words shall be held that there was no issue living at the person's death.

Devises of Estates Tail shall not lapse.

"XXXII. And be it further enacted, That where any Person to whom any Real Estate shall be devised for an Estate Tail or an Estate in quasi Entail shall die in the Lifetime of the Testator leaving Issue who would be inheritable under such Entail, and any such Issue shall be living at the Time of the Death of the Testator, such Devise shall not lapse but shall take effect as if the Death of such Person had happened immediately after the Death of the Testator, unless a contrary Intention shall appear by the Will."

A devise of an estate to a person in tail shall not lapse by the death in testator's lifetime of *that person*, provided he leaves issue who would have inherited from him living at the death of the testator, in which case the devisee shall be held to have survived the testator, and died immediately after him.

Gifts to Children or other Issue who leave Issue living at the Testator's Death shall not lapse.

"XXXIII. And be it further enacted, That where any Person being a Child or other Issue of the Testator to whom any Real or Personal Estate shall be devised or bequeathed for any Estate or Interest not determinable at or before the Death of such Person shall die in the Lifetime of the Testator leaving Issue, and any such Issue of such Person shall be living at the Time of the Death of the Testator, such Devise or Bequest shall not lapse, but shall take effect as if the Death of such Person had happened immediately after the Death of the Testator, unless a contrary Intention shall appear by the Will."

Although the last section requiring any notice, this is far from being of the least importance, for it enacts that *no* bequest, whether of real or personal estate, to a child of the testator who shall die in his lifetime leaving issue living at the testator's death shall lapse, but shall be conveyed, not to the testator's living grandchild, but to the representative of the deceased child, as if he were alive, so that as far as personal property is concerned, a grant of probate or administration will be necessary to enable his personal representative to obtain legal possession of the gift. For example—A leaves a legacy of £500 to his son, B. B dies in A's lifetime, leaving a child, C. When A dies, provided he has not altered his will, even should it be 10 years after B's death, the legacy of £500 will belong to B's estate, and pass under his will, if any, if not, to his next of kin, and probate or administration must be obtained sufficiently stamped to cover the value of this asset.

Before presenting the form of a will in which shall be contained most kinds of bequests, a few observations as to who is competent to make a will, and how legatees should be described, may not be unnecessary. A will cannot be made by a minor, a lunatic, an idiot, a felon, a person attainted of treason, or an outlaw; or by a married woman without the consent of her husband unless under a power contained in some other instrument. In describing legatees it is always as well to avoid any other name than the proper Christian and surname of the legatee; "pet names," not unusual in families, are very apt to lead to mistakes, and consequent litigation, and had better not be used. So with illegitimate children, great care should be taken to describe them properly, as, "Jane, the daughter of Sarah Foat," or, the "child with which Sarah Foat is now pregnant." As previously stated, the plainer and more concise the language in which the will is written the better; there is no absolute necessity for the use of legal terms; a letter written to a friend, provided it be signed and witnessed in accordance with the pro-

visions of the Act, asking him to divide the writer's property in a particular way would be admitted to probate by the Court. In describing the executor care should be taken that all the Christian names, if he have more than one, are correctly inserted, and that his surname be correctly spelt, as an omission in this respect may put him to considerable inconvenience in proving his identity when he applies for probate of the will before the Registrar.

In order to avoid the slightest chance of litigation it is advisable to follow the form which is in general use, and which mostly begins with the words, "This is my last will and testament," or, "I, George Hale, make this, my last will and testament, as follows." Thus commencing, and having ascertained which of his friends will be willing to act as his executor, we will presume the testator will dispose of his property in the following manner:—

THE FORM OF A WILL.

I, George Hale, of No. 34, Eaton Place, Belgrave Square, make this my last will and testament, as follows:—

I appoint my friend Job Thornton to be my executor, and I desire him to bury me in a plain and inexpensive manner. I direct him to pay all my just debts, including therein the mortgage debt now existing on my Hornbeam property, out of my personal estate. Should my executor act in that capacity, and prove my will, I leave him a legacy of £100 for his trouble. I desire all the legacies and annuities given by this my will to be paid free of duty. I leave to my dear wife Amelia all my furniture, plate, linen, china and other household effects in my house in Eaton Place, together with all the pictures, books and objects of vertû therein for her own absolute use and benefit. I leave all the household furniture, plate, pictures, books and objects of vertû in my house at Hornbeam to my executor upon trust to hold the same as heirlooms to go along with my estate of Hornbeam hereinafter devised. I leave to my wife a legacy of £300, to all my indoor servants £10 each, to my coachman £19. 19s., and to all my servants a suit of mourning each. I direct the before-mentioned legacies to be paid within one month after my death. I leave to my daughter Mary, the wife of John

Payment of Debts.

Gift to Executor.

Gift of Furniture absolutely.

Gift of Heirlooms.

Legacies under £20 in value.

Gift to a Married Woman.

Jameson, a legacy of £500, to be paid to her for her own separate and absolute use. I leave to my executor the sum of £5,000 upon trust, to invest the same upon real security, or in the public funds, and to pay the interest or dividends thereof to my daughter Mary Jameson, for her own sole use and benefit during the term of her natural life, and after her death to her husband the said John Jameson for his natural life, and on the death of the survivor of them, I direct my executor to call in and realise the capital sum of £5,000, and divide the same equally among the children of my said daughter Mary, who shall attain twenty-one years of age, or to the survivors of them, or to the issue, if any, who shall have died in the lifetime of my said daughter and her husband, such issue to take the share to which their parents would have been entitled had they survived, but should my said daughter die without leaving any children, or leaving such they should all die under twenty-one, and without issue, then and in such case I give my daughter power to appoint the same among such persons, and in such manner, as she may think proper by deed or will. I leave to Jane Topham, the daughter of Mary Topham, by my late son Andrew, the sum of £1,000 £3 per Cent. Consolidated Bank Annuities. I leave the treasurer of the Hornbeam Orphan Asylum £100 for the benefit of that institution. I leave £500 to repair the tower of the Church of St. Michaels, in the parish of Hornbeam. I leave to the Greycoat School at Hornbeam the sum of £50; also I leave to Hornbeam Hospital a legacy of £50, and I direct all these my charitable bequests to be paid in priority out of such part of my personal estate as is applicable by law for the payment thereof. Whereas my old friend Richard Barton is indebted to me in the sum of £200 on bond, now I hereby forgive and release the said Richard Barton from the payment of this bond, and I direct my executor to deliver up the bond to the said Richard Barton cancelled. I give and bequeath to my two aunts, Bridget and Emma Cattlin, the leasehold house No. 16 North Audley Street, Grosvenor Square, to be held by them as joint tenants. I leave my god-child, Charles Astley, the eldest son of my sister Mary Astley, an annuity of £50, payable on the usual quarter days, the first quarterly payment to be made on the first quarter day next after my death. I leave to my sister Mary Astley the sum of £400, £3 per Cent. Consolidated Bank Annuities, to be transferred to her out of the larger sum of the same stock standing in

The Gift of a Sum to be invested.

A Legacy to a stranger.

A Bequest to Charities.

Forgiveness of a Debt.

A Bequest to two Persons in joint tenancy.

A Gift of an Annuity.

A Bequest of Funds, Stocks, and Shares.

my name in the books of the Governor and Company of the Bank of England; but should there not be sufficient £3 per Cent. Consolidated Stock standing in my name at my death, I direct my executor to purchase stock to that amount in the name of my sister for her own absolute use and benefit.

A Bequest to a Minor.

I give and bequeath to my executor the sum of £500 Debenture Stock in the Great Western Railway upon trust to receive the dividends and pay the same towards the maintenance and education of Elizabeth, the daughter of Anna Flower, until she attains the age of 15 years, and then to sell so much of the said stock as may be necessary, and in his discretion to apply the proceeds as he may think proper in apprenticing her to some trade or business, and stand possessed of the remainder in trust to apply the dividends towards her maintenance until she attains 21 years of age, and then to transfer the stock to her absolutely.

A Bequest of a sum to be laid out in purchase of Freehold Estate.

I give and bequeath to my executors the sum of £5,000 upon trust to lay out the same in the purchase of a freehold estate, to be held upon the same trusts as those affecting my estate at Hornbeam, hereinafter devised for the benefit of my eldest son, John.

A Devise of Freehold Estate.

I give and devise all that my estate at Hornbeam unto the use of my eldest son, John, during his life, and at his death to his first and other sons successively in tail male, with remainder in default to my second son, Henry, for life and on his death to his first and other sons successively in tail male, and in default to the first and other sons successively in tail male of my daughter Mary Jameson, with remainder in default thereof to my own right heirs for ever.

A Gift of Reversionary Property.

I give and bequeath all the reversionary interest in the real and personal estate of my uncle, Samuel Orton, to which I am entitled absolutely at the death of my aunt, Hannah Orton, unto my second son, Henry, for his own absolute use and benefit.

A Gift of Residue.

As to all the residue and remainder of my real and personal estate, wheresoever situated and of what nature or kind soever, and including any over which I have a power of appointment, I give the same to my executor upon trust to sell, get in, realize, and collect the same as soon as possible, and when so realized to invest the same in real or Government securities, and pay so much of the rents, interest, and dividends, as may be necessary for the maintenance, education, and advancement of all my children during their respective minorities, and accumulate the remainder, and on each child attaining 21 years of age to pay the capital and accumulations of the share of the one so attaining that age

to such child absolutely, with power for my executor at any time during the minority of either of my children to alter and vary such investments.

Power to appoint new Trustees.

I empower my executor, should he at any time desire to be released from the trusts of this my will, or my wife, should my executor become incapacitated, to appoint a new trustee to act in his place, and immediately upon the appointment of such new trustee the before trust premises shall be conveyed and transferred to such new trustee, who shall be entitled to use and exercise the same power and authority in relation to the trust as if he had been appointed to act as a trustee originally by this my will. I declare that my executor, trustee, or trustees, shall be allowed all reasonable costs, charges, and expenses, and fees to counsel, which he or they may incur in the execution of this my will.

Costs, Charges, and Expenses.

In witness whereof I have hereunto set my hand this 15th day of April, one thousand eight hundred and seventy-six. GEORGE HALE.

Signed by the said George Hale in the presence of us present at the same time, who, in his presence, at his request, and in the presence of each other, attest and subscribe our names as witnesses hereto.

WM. GOULD, 3, Ebury Place, Pimlico.
JAMES PLATT, 24, Sloane Square.

Where a person desires to leave all his property to his wife, and yet restrict her from giving it at her death to any but his children, he had much better give her only a life interest in it, as many cases (in which testators shrinking from what might be construed into an imputation on the wife of a want of care and affection for the children, and hesitating to make them wholly dependent upon her, have employed words which appeared to avoid both difficulties,) have been brought before the court for decision on the construction to be put upon the words of the will, causing ill-feeling in the family and expense to the estate. See the cases of Thorpe *v.* Owen (2 Hare 607), and Biddles *v.* Biddles (16 Sim. 1), and Lambe *v.* Eames (Chancery Appeal 597).

Where the testator has no child, or should no scruple arise in his mind at entrusting their future prosperity to his wife, he will give his property to her absolutely. I insert, therefore, two forms of wills, one giving all the property to the wife absolutely, and the other for the benefit of the wife for life, and then to the children.

A FORM OF WILL GIVING ALL THE PROPERTY TO THE WIFE ABSOLUTELY.

I, John Doderidge, of 24, Woburn Place, Russell Square, gentleman, do make this my last will and testament as follows:—I give, devise, and bequeath unto my dear wife, Emily Jane, all my real and personal estate of every description, whether in possession or reversion, for her own absolute use and benefit, and I constitute her the sole executrix of this my will, as witness my hand this 20th day of February, 1876.

JOHN DODERIDGE.

Signed by the said John Doderidge, the testator, in the presence of us present at the same time, who in his presence, and in the presence of each other, attest and subscribe our names as witnesses thereto.

ANDREW CLARKE.
SAMUEL JONES.

A FORM OF WILL, GIVING ALL THE PROPERTY FOR THE BENEFIT OF THE WIFE FOR LIFE, AND AFTERWARDS TO THE CHILDREN.

I, Andrew Clark, of 13, Pelham Crescent, Brompton, make this my last will and testament as follows:—I leave to my dear wife Amelia, and my friend, Edward Thornton, whom I hereby appoint my executors, all my real and personal estate upon trust, to pay the rents, interests, and profits to my said wife for life, and, after her death, to sell my real estate and convey the same to the purchasers, and to realize and get in my personal estate, and divide the proceeds of both the real and personal estate equally among my children. I constitute and appoint my wife, and my dear friend Edward

Thornton, to be my executors, to carry out the trusts of this my will. As witness my hand this 24th day of September, 1875.

ANDREW CLARK.

Signed by the said Andrew Clark, the testator, in the presence of us present at the same time, who in his presence, and in presence of each other, attest and subscribe our names as witnesses thereto.

CHARLES HAMMOND.
JAMES KEARSEY.

Having given the form of a will which disposes of that kind of property generally possessed by persons who may be termed at the present day of moderate means, we will proceed to analyse it in order to draw the attention of the reader to the particular points involved in each bequest which are necessary to be observed; but, before doing so, it may be remarked that it is always better in making a will to contrive that all the bequests may be so arranged as to prevent the possibility of some dear relative or friend being accidentally omitted from among the legatees; and this is easily accomplished by adopting some such order as the following, viz., first, specific legacies, such as household furniture, stocks, shares, &c.; secondly, money legacies and annuities; thirdly, real estate, and finally the general residue.

Payment of Debts.

It is not absolutely necessary to desire an executor to pay the debts of a testator, for the law will compel him to do so before dividing the estate in accordance with the will, but if the testator has mortgaged his real estate, and he desires that the devisee should take this property freed from the mortgage existing upon it, he should specially mention that he desires his executors to pay the mortgage debt out

of his personal estate, otherwise in accordance with the provisions of the 17 and 18 Vic. cap. 113, to which an Amendment Act was passed, 30 and 31 Vic. cap. 69, the devisee will have to take the real estate burthened with the mortgage, as by the terms of that Act the real estate is declared to be the primary fund for the payment of any mortgage debt secured thereon; and in the second Section of the latter Act it is declared that the term "mortgage" shall extend to any lien for unpaid purchase money on any land purchased by the testator.

A Gift to the Executor.

Where the estate is of any size it is not at all an unusual practice to leave the executor a legacy for the trouble he may have in administering it, and, if the legacy is intended to be left on that account only, the words "for his trouble as an executor," should be inserted; but if it is intended to leave the executor a legacy simply as a token of friendship, care should be taken not to insert such words, or any others, which would impose upon the legatee the necessity of proving the will to enable him to obtain his legacy.

A specific Gift of Furniture, &c., absolutely.

It is only necessary to observe here that in bequests of this description the testator should specify particularly what it is he intends to include in the bequest, as the simple words "household furniture" would not be sufficient to carry also pictures or books or objects of vertû along with it; it is much better, therefore, if the entire contents of the house are intended to be given, to enumerate the different kinds of articles such as "furniture," "plate," "linen," "china," "glass," "books," "pictures," and "objects of vertû." It may here be mentioned that the wife's paraphernalia, under

which denomination is intended her wearing apparel and jewels, belong to her after her husband's death in her own right, and will not belong to the executor to form part of the general estate; but should the testator bequeath to her other things of a like description and dispose of hers to some other person, she cannot take both, but must make her election as to which she will take, viz., what the law allows her or what the will gives her.

A Gift of Articles to be enjoyed as Heirlooms.

In giving furniture, books, pictures, &c., to go as heirlooms, it should not be forgotten that in order to do so, it is necessary to attach them to an estate, as it is not possible to entail a personal chattel by itself, nor can the operation of the will affect them after they fall into the hands of any person entitled to bar the entail.

There is another point to be observed in regard to specific bequests, viz., that they take precedence of money legacies, for should there not be sufficient personal assets to pay the debts and money legacies in full, the latter will not only have to abate, but, if need be, would have to be entirely absorbed in paying the debts before the executor could resort to the specific bequests for that purpose.

Legacies under £20 in value.

The object of giving a legacy of £19. 19s. is to avoid the payment of the duty imposed by the 36 Geo. 3, cap. 52, on all bequests of the value of £20 and upwards; it should be borne in mind, however, that the duty attaches to the aggregate amount of the bequests given to the legatee and not to the value of each particular one, so that a bequest of £19. 19s., supplemented by a gift of mourning, will make the total value of the gift under the will above £20, and

liable to the tax, and thus the object of making the money legacy only £19. 19s. will be frustrated.

Legacies payable within one Month.

If no date of payment is stated in the will, an executor by law has 12 months allowed him to prove the will and realize the estate before he can be called upon to pay the legacies. As it is sometimes a matter of consequence that a legatee should have the legacy as quickly as possible, the widow, for instance, to enable her to pay for the mourning of herself and family, and keep on the house, pay the wages of the servants, &c.; and as some executors, either from being very slow and methodical in their movements, or from other causes do not feel disposed to pay the legacies before the expiration of the 12 months allowed to them, the testator should expressly state in the will what legacies he wishes to be paid within a specified period of time, and the executor will thus not only be enabled, but may be compelled to do so, unless he can shew that the testator has died insolvent.

A Bequest to a Married Woman.

It is always better in leaving a legacy to a married woman, of more than £200 in value, to insert the words "to her separate use free from the debts and independent of the control of her husband" as it will enable her to receive her legacy and have it invested in her own name independent of her husband, who will not be able without her consent to obtain possession of either the capital or the interest, a very great benefit to her should he happen to be of bad character, whereas should there be perfect confidence between the husband and wife, the latter may of course hand it over to him if she pleases; should the legacy however not exceed £200 in value it may be paid her as to her separate use and

her receipt alone will be considered as a good discharge for the same without any words in the will to that effect; see the following section of the 33 and 34 Vic., cap. 93:—

33 & 34 Vict., Cap. 93, S. 7. Personal property not exceeding £200 coming to a married woman to be her own.

"Where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same."

It may be as well to mention here with regard to general legacies, that should the testator subsequently to his will desire to add by a codicil a further sum to that already given, he should state in the codicil that it is in addition to the legacy given by his will, otherwise a question might arise as to whether the intention was that the legatee should have one or two legacies. So with regard to legacies to children, should the testator after making his will settle a sum of money on the marriage of one of them, such portion so settled would operate as an extinction of the legacy given by the will, whatever the amount of the legacy, unless the contrary intention is expressed by a codicil subsequent to the settlement.

The Gift of a sum of Money to be invested.

In giving a legacy to the executor upon trust to invest for the benefit of a legatee for life, and transfer the capital to another person on his death, it should be stated distinctly on what security the executor is to invest the same, for should power be given to him to invest it on any kind of security he might think proper, and at the death of the life-tenant the value of the security be not worth, say by half, the amount originally invested, the legatee then entitled could not call upon the executor to make good the defi-

ciency, as he might legally do in case the executor had taken upon himself to invest the legacy on security of a different nature to that indicated by the will.

A Legacy to a Stranger or Illegitimate Child.

In ordinary cases in giving a legacy to a stranger it is only necessary to specify the legatee by the Christian and surname, but in cases of illegitimacy it is better to describe the legatee not only by the Christian and surname, but also as the child of such a woman, so that there may be no difficulty in identification, and should the object of the testator's bounty be yet unborn, the description must not have reference to the father of the child, but as the child with which such a woman (naming her) is pregnant.

A Charitable Bequest.

Under the provisions of the Act, 9 Geo. II., cap. 36, commonly called the Mortmain Act, no lands or hereditaments, nor any personal estate to be laid out in the purchase of land, or the proceeds of the sale of land or hereditaments or mortgages existing thereon, shall be given or settled in trust for any charitable use, except by deed as an immediate gift 12 months before the death of the donor. So that if a testator desires to leave a bequest to a charity he must take care not to make it payable out of property either freehold, copyhold, or leasehold, either rentcharges or mortgages, but must add that he desires all his charitable legacies to be paid out of that part of his personal estate which is "applicable by law for that purpose," and should he desire them to be paid in full he must also add the words, "in priority to the other bequests in my will," otherwise should there not be sufficient *pure* personalty to pay all the money legacies in full, the charitable legacies will have to abate in the same

proportion to the entire legacies as the exempted property bears to the entire residue. It must be added, however, that gifts for the benefit of the "Universities of Oxford and Cambridge and their Colleges; Eton, Winchester, and Westminster Colleges, and Queen Anne's bounty, are exempted from the operation of the Act." A testator may also leave under the 43 Geo. III., cap. 108, 5 acres of land and personalty of the value of £500 for the building and repair of a Church or parsonage, and by the 34 Vic., cap. 13, he may leave not more than 20 acres of land for a public park, two acres of land for a public museum, and one acre of land for a schoolhouse, or money to be laid out in purchasing the same, but the will or codicil thereto must be executed 12 months before the death of the testator.

It is proper to state here that a gift by a will for superstitious uses, such as "Masses for the repose of the soul," &c., is absolutely void out of whatever kind of property it may be directed to be paid.

Forgiveness of a Debt.

If a testator desire to forgive or otherwise release a debtor from the payment of his debt, he should do so in so many words, as merely nominating him an executor will not operate in equity as a forgiveness of a debt, as has been erroneously supposed, so also if he leave a legacy to his debtor of the same amount as his debt, this will be held merely as an extinguishment of the debt.

A Bequest to Two Persons in Joint-tenancy.

Where it is intended that the survivor of two legatees shall take the share of the one who dies first (unless they shall sever the joint tenancy by some mutual act of their own), in order that there may be no misunderstanding as to

the intention of the testator the words "as joint tenants" should be inserted after their names, as without these words the property might be held to pass to the two persons as "tenants in common," that is such legatee would take a moiety at once absolutely to do with as he might think proper, and which moiety on the death of one instead of surviving to the other would belong to the legal representative of that deceased to pass to his heir at law or next of kin according to the tenure of the property. It only remains to add that it is as well to avoid such expressions as "equally between," "share and share alike," "jointly and equally," for these constitute a tenancy in common and thus the intentions of the testator would be defeated. Should it, however, be the desire of the testator that each legatee should at once have absolute dominion over a moiety of the bequest, he should on the contrary be careful not to omit the "words of severance" as they are called, *i.e.*, "as tenants in common," otherwise he will establish a joint tenancy instead of a tenancy in common which he desired to bestow.

A Bequest of an Annuity.

The legatee of an annuity will receive the full amount specified, at the expiration of one year from the day of the testator's death, always supposing no time to be fixed by the will for its payment, but the legatee of a life interest in a sum of money under the same circumstances cannot compel the payment of a year's interest until *two* years from the testator's death, for one year is allowed the executor to collect the estate, and he is not bound to invest until the expiration of that time.

A Bequest of Funds, Stocks, and Shares.

In giving a legacy of Funds, Stocks, or Shares standing

in the testator's name or part thereof, it should be remembered that should the testator have sold out all or any part, in his lifetime, and the executor find that there is not enough to pay the legatee the amount given to him by the will, the executor cannot be compelled to make good the deficiency out of the remaining property, unless there be an express direction in the will in the following words:— "Should there be no such funds, stocks, and shares standing in my name at my death, or should there not be sufficient to pay the legatee (naming him) the amount specified in this my will, I direct my executor to purchase a sufficient sum for that purpose," but if the testator bequeathes so much *money* and points out certain stocks, &c., simply as the fund from which the bequest is to be satisfied, the non-existence of such stock standing in the testator's name will be no bar to the payment of the legacy.

A Bequest to a Minor.

Where the legatee happens to be under age, the executor will invest the legacy, and may at his own *sole discretion*, under the provisions of the 23 & 24 Vic., c. 145, part iii., sec. 26, apply the income or part thereof, for the maintenance or the education of the legatee during his minority, and subject thereto he must accumulate the income, and on the legatee attaining his age of 21, the executor will pay the capital, with all its accumulations, to him. To avoid, therefore, the chance of any difficulty arising by the executor refusing to pay any portion of the income for the maintenance, &c. of the child, it is better to insert a clause in the will, directing the executor to pay all or any part of the income (or part of the capital, if thought necessary for his preferment in the world) for the maintenance and education of the legatee during his minority.

A Devise of Real Estate.

In giving Real Estate, one great point necessary to consider is, that should the tenure of the property be unknown, or should portions of it be of different kinds of tenure, part freehold, part copyhold, it is better to describe the devise without technicality, as simply "My Estate at Hornbeam," which will be quite sufficient to pass the whole estate, of whatever tenure it may be; whereas, should the description be "my Freehold Estate," and the tenure turn out to be copyhold, or part freehold and part leasehold, the devisee will only take the freehold part, and the remainder will pass under the residuary devise, if there be one. It is, however, impossible in a small work of this kind to enter into all the technicalities of the law with regard to the disposition by will of real property; it may be observed, however, that a testator cannot by will dispose of property of which he is tenant in tail, *i.e.*, held to him and the heirs of his body, unless he bars the estate by executing a disentailing deed in his lifetime, and such deed may be executed either before or after the making of the will.

If it is desired to settle real property in strict entail, it is advisable to consult some respectable solicitors to carry out the intention.

A Gift of Reversionary Property and Property over which the Testator has an absolute power of Appointment.

It is only necessary to mention that unless property of this description is specifically given by the will, it will pass under the general residuary clause, if there be one, but should the testator have failed to dispose of the residue of his property, that part of it which is reversionary or in expectancy will pass to his heir at law or next of kin,

according to the nature thereof, and such property as he might under some other instrument have appointed absolutely by his will, will pass to the persons named in that instrument, to take in default of his exercising such power.

The Bequest of Residue.

In bequeathing the residue of the estate it is always advisable to insert the word "Real," as well as personal estate, for should the testator become possessed of any such, after the date of his will, or should any devise lapse by reason of the death of the person to whom any real estate was given in the will, it will pass under the residuary clause to persons obviously intended to be benefited, whereas should the residuary clause fail to dispose of the real as well as the personal property of the testator, the lapsed devise or other property will pass to the heir at law, a destination which might be contrary to his wish. Should the testator desire that any portion of the rents, dividends, or interest of his estate be accumulated, it should not be overlooked that by the 39 & 40 Geo. III., cap. 98, the law does not allow a longer period of time for accumulation than 21 years, so that if the direction should be to accumulate beyond that limit it would have the effect of creating a partial intestacy between the expiration of the period allowed by law, viz. the 21 years, and of that mentioned in the will, for the time at which the legatee would take the bequest, would not be accelerated, thus, not only leading to confusion and the consequent defeat of the testator's intention, but also to litigation and its attendant costs.

The property of a testator may become so much depreciated in value between the date of the will and his death, that the residuary legatee might receive no benefit at all after the legacies had been satisfied in full; to prevent this

it would be much better to leave the residuary legatee a specific legacy of such a sum as the testator considers the residue of his estate would amount to, in which case the residuary legatee would share with the other legatees and benefit to that extent, at least in the estate of the deceased.

As it may be considered a great act of kindness on the part of a friend to consent to undertake the office of executor, involving, as it always must, both his time and labour, it behoves the testator to make such a provision as will at least prevent his suffering pecuniary loss, it is therefore advisable to insert a clause stating that all reasonable expenses, fees to counsel, and costs in connection with the administration of the estate are to be allowed him. Formerly it was a matter of considerable trouble and expense for an executor or trustee to obtain a release from his duties when once he had accepted the trust, unless a special clause were inserted in the will to enable him to appoint some one to act in his place, but this difficulty has been obviated by the passing of the 23 & 24 Vic., cap. 145 (called the Trustee Relief Act), a copy of which will be found at page 114, and there is no absolute necessity now to insert such a clause in the will. It may also be added that testators would save much trouble, loss of time, and inconvenience by leaving annexed to the will a detailed list of their property, so that the executor might arrive with facility at a fair estimate of the value of the personalty in order to obtain probate of the will as quickly as possible

ON PROVING WILLS.

CHAPTER II.

A PERSON finding himself appointed an executor for the first time, and being desirous of carrying out the wishes of his deceased friend by acting in that capacity, will naturally be at a loss to know how to obtain probate of the will. Before proceeding to the Registry to lodge the will, make the necessary affidavits, and produce evidence of the death of the testator whose will it is intended to prove, the executor should endeavour to ascertain, as near as possible, the amount or value of the deceased's personal estate, in order that the proper stamp may be impressed on the grant. A table of the stamps payable according to the value of the property will be found at the end of this chapter. As considerable error seems to exist with regard to the date at which the value of the different assets should be ascertained, it may be as well to say that they should be valued as near as possible at the date of the grant, and *not at the date of the death*, as is too frequently assumed, and it is of much consequence that this fact be noted, as should any considerable time elapse between the date of the death and the date of the grant, the value of the assets on which the stamp duty would fall to be paid might

differ materially from their value at the date of the death, for the prices of stocks and shares may have either increased or decreased in the interval, added to which all dividends, interest, and rents of leaseholds, accrued within the same period, will have to be included under the stamp in accordance with the decision in the case of Partington *v.* Attorney-General. (H. L., English and Irish Appeals, 100.)

In preparing an estimate for probate, no deduction must be taken for debts or expenses, the stamp impressed upon the grant attaching to the gross and not the net value of the estate, with two exceptions; the first being where the testator has mortgaged his *leasehold* property, in which case the 31 & 32 Vict., c. 124, permits the executor to deduct the amount of the mortgage debt from the saleable value of the property, provided that it happens to be the *sole* security for the payment of the debt; and secondly, should the testator have obtained by way of loan an advance on his policy of insurance *from the office in which his life is insured*, and, by a recent Act (30 & 31 Vict. cap. 144), should he have assigned his policy by way of security for a loan, the mortgagee being enabled to *sue in his own name* for the recovery of the money insured, the executor may in such cases include only the amount he will receive from the office or the mortgagee, after they have retained the sums advanced to the deceased. The executor may, if he please, leave out from the assets to be included in the schedule for probate such debts due to the deceased as may be considered doubtful or desperate, in accordance with the decision upon that point in the case of Moses *v.* Crafter (4 Car. & Payne, 524).

In order to show what may be considered personal estate to be included in the amount sworn to in the affidavit presented to the Registrar of the Court before obtaining the grant, and to ascertain the proper stamp to be impressed on the probate as imposed by the 55 Geo. III., cap. 184, an assumed schedule is here inserted, giving every kind of personal property on which the stamp duty attaches:—

A SCHEDULE of those personal assets of a deceased person considered liable to stamp duty, and which have to be included in the affidavit of value in obtaining a grant of probate or letters of administration :—

Cash in the house.
Money at the bankers.
Household goods, furniture, plate, linen, china, pictures, books, jewellery, carriages, and horses.
Farming stock and implements of husbandry.
Growing crops on the land, including that of which deceased was tenant for life.
Stock in trade.
Goodwill of the business.
Book and other debts.
Next presentation to a living.
Property on the high seas or in transitu.
Stocks in the funds of Great Britain.
Foreign stocks, funds, and bonds (transferable in this country without the necessity of sending a power of attorney abroad).
Colonial securities.
Indian securities registered in London, or enfaced in India to be so registered.
Canal, railway, and other shares, and debentures in public companies.
Bonds, bills, notes of hand, and other like securities.
Mortgages.
All dividends and interest, and any apportionment thereof up to the date of the grant.
Rents, and apportionment of rents of real estate up to the date of the death.
Rents and apportionment of rents of leasehold up to the date of the grant.
Leaseholds (less mortgages thereon).

Policies of Insurance.
Ships and shares of ships.
Deceased's share in a partnership business.
Proceeds of the sale of real estate contracted to be sold by the deceased in his lifetime though contract not completed.
Any personal property over which the deceased has an absolute power of appointment under some other will or instrument.
The value of any real estate which, under the trusts of some prior will or other instrument, is directed to be sold, but which may not have been sold or conveyed to the deceased in his lifetime.
The present value of any reversionary property (this is not compulsory, and may be omitted at the option of the executor).
Heritable bonds in Scotland.

The above schedule is believed to contain, under one head or the other, every description of personal property on which the stamp duty attaches, and the total value of such property of the testator is what the executor will have to insert in his affidavit. But, as differences of opinion appear to prevail as to the propriety of including some of these items amongst the assets liable to stamp duty, an explanation is added in support of their liability.

The Goodwill of a Business.

It has frequently been asserted that the goodwill of a business has no value separate and distinct from the premises in which it is carried on, and that the value of the lease and goodwill go together; this may be so with regard to some kinds of businesses, for instance, a publican's; but, on the other hand, that of a pianoforte maker, depends more upon the name of the maker than the premises, and, consequently, the value of the good-

will would be a separate item of itself, apart from the place of business. The fact of a goodwill being capable of valuation, separate and apart from the lease of the premises, was clearly laid down by Lord Romilly in Smith *v.* Everett (27 Beavan 448). See also "Collyer On Partnership," page 174.

Crops on the Land.

Williams, in his treatise on the "Law of Executors," remarks that, "the doctrine of emblements extends not only to corn and grain of all kinds, but to everything of an artificial and annual profit that is produced by labour and manurance, as hemp, flax, saffron, and the like; melons of all kinds; hops also, as well as potatoes."

In estimating the value of growing crops, the executor should endeavour to ascertain, as near as possible, what the crops are likely to realise after being harvested, as, whether the land belongs to the testator in fee or as life tenant, that which he has sowed he may reap, or should he die before the harvest his executor may reap for him.

The next Presentation to a Living.

Although the advowson is part of the real estate and not assets liable to be included in the grant for probate, as passing to the heir and not the next of kin, the next presentation to a living when not vacant is an asset which can be sold, and the value thereof should be included in the schedule. A rule for arriving at the value, supposing it is not intended to sell the next presentation, may be stated as follows:—Assume the age of a supposed presentee to be twenty-five, value the annual income of the living by the Table No. 1 appended to the Act 16 and 17 Vic., cap. 51, according to that age, and deduct from this the value of the income by Table No. 2 appended to the same Act according to the ages of the incumbent and the same person for the joint continuance of the two lives. For example, presume the income of the

living to be £200 a year, the age of the supposed person to be presented 25, the age of the incumbent 75.

The value of £200 a year for a life aged 25 by the Table No. 1 is	£3,388	0	0
Deduct the value of the £200 a year for the joint lives 75 and 25 by Table No. 2 ...	1,015	17	0
The result is	£2,372	3	0

as the value of the next presentation.

Property on the High Seas or in Transitu.

An illustration of this kind of asset may be afforded by supposing the testator to be a tea merchant trading with China. Any cargo on board of a ship coming to this country and consigned to him would be considered property which the executor could claim and take possession of by virtue of the grant, and therefore should be included in the affidavit of value. In Wykoff's case (3 Swa. and Trist., 20), the deceased was a foreigner, and died on board of a ship coming to this country, having goods in his possession, it was held that the stamp duty was payable in respect of those goods; and so in the case of Attorney-General *v.* Pratt (L. R., 9 Exch. 140), Archdeacon Pratt being resident in India died there in 1871. Just before his death he directed his bankers to realise certain securities and remit them to Messrs. Coutts in London. In accordance with these instructions the bankers realised the securities, and with the proceeds purchased on the 12th December, 1871, certain bills of exchange, which they despatched by post to Messrs. Coutts and Co. The Archdeacon died on the 28th December, 1871, and Messrs. Coutts and Co. received the bills of exchange in January, 1872. It was decided that they were assets *in transitu* at the death, and taken by the executor *virtute officii* as debts locally situated where the debtors, Messrs. Coutts and Co. were found to be, viz., in London.

Foreign Stocks, Funds, or Bonds, realisable in the open Market.

Where it is indispensable that the purchaser inscribe his name personally, or by sending a power of attorney, in the books of a foreign country before the purchase can be completed and the transfer made, such as in the case of French Rentes, the assets will be considered to be out of the jurisdiction of the Court, but it is not so where the transfer can be made and the sale completed in this country, and where the executor can go into the open market and dispose of the securities from hand to hand. This was clearly laid down in the case of the Attorney-General *v.* Bouwens (4 Mee and Wel. 171). So also scrip for foreign loans, which previous to the decision in the case of Goodwin *v.* Robarts and another (H. L. Appeal Cases, 1876) was considered to partake of the nature of the loan itself, and to be negotiable or not according to the negotiability of the loan in this country, is now held by the decision of the judges in the above case to be assets in this country, thus finally setting at rest this question; and scrip for foreign loans must be treated in future as representing money and transferable to bearer.

Indian Securities.

The 23rd Vic., cap. 5., describes what is to be included under this head, and is as follows :—

"*An Act to regulate Probate and Administration with respect to certain Indian Government Securities; to repeal certain Stamp Duties; and to extend the operation of the Act of the Twenty-second and Twenty-third Years of Victoria, Chapter Thirty-nine, to Indian Bonds.—23rd March,* 1860 :

"Whereas at various Times the Executive Government of *India* has raised Moneys for the Public Service by the Issue of Government Promissory Notes and by Government Loans severally payable in *India*, and by various public Notifications of the said Government, or Regulations to be made by the Secretary of State in Council, the Owners of such Notes have been or may be allowed the Privilege of having the current Interest thereon made payable in *London* by Drafts payable in *India*, and the Holders or Owners of Shares or Portions of such Loans have been or may be allowed the Privilege of having the same registered and made transferable, and the Interest thereon made payable in *London*: And whereas upon the Death of the Holders of Notes as to which the said Privilege shall have been claimed Questions may arise as to the Place in which the same are properly to be deemed Assets of the deceased Owner, and it is for the Convenience and Advantage of the Estates of such Persons that the same should be deemed Assets in this Country and not in *India*: And whereas by an Act passed in the Session holden in the Fifth and Sixth Years of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-four, Section Five, the Transfer of any Part of the Territorial Debt of the *East India* Company in *India* in the Books of the said Company in *England*, whether upon a Sale thereof or otherwise, was made chargeable with a Stamp Duty of One Pound Ten Shillings, and it is expedient to repeal so much of the said Act as imposes the said Stamp Duty: And whereas under the Authority of various Acts of Parliament the *East India* Company were empowered to raise Money upon Bonds to be issued under their Common Seal, and the said Bonds formerly constituted the Bond Debt of the *East India* Company, and are commonly designated *East India* Bonds: And whereas by an Act passed in the Session holden in the Twenty-first and Twenty-second Years of the Reign of Her present Majesty, Chapter One hundred and six, Section Sixty-seven, all Liabilities of the *East India* Company were transferred to the Secretary of State in Council: And whereas by an Act passed in the last Session of Parliament, Chapter Thirty-nine, Power was given to the Secretary of State in Council to raise Money by Bonds or Debentures or the Creation of a Capital Stock or Annuities upon or for the Repayment of any Principal Money secured under the Authority of the

23 Vic., c. 5.

23 Vic., cap. 5. said Act or of either of the Acts therein recited: And whereas it is expedient to extend such Power of raising Money to the Repayment of any of the *East India* Bonds aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; (that is to say),

Indian Government Notes on which Interest is payable in London, and certain Indian Government Promissory Notes, to be deemed Bona notabilia in England.

"I. All *Indian* Government Promissory Notes, and Certificates issued or Stock created in lieu thereof, being Assets of a deceased Person, the interest whereon or in respect of which shall be payable in *London* by Drafts payable in *India*, and which at the Decease of the Owner thereof shall have been registered in the Books of the Secretary of State in Council in *London*, or in the Books of the Governor and Company of the Bank of *England*, or shall have been enfaced in *India* for the Purpose of being so registered before the Decease of the Owner thereof, and all *Indian* Government Promissory Notes issued with Coupons attached, which under such Regulations and Conditions as may be determined from Time to Time by the Secretary of State in Council, shall be so registered, and all Certificates issued or Stock created in lieu thereof, shall be deemed and taken to be Personal Estate and *Bona notabilia* of such deceased Person in *England*, and Probate or letters of Administration in *England*, or Confirmation granted in *Scotland*, and sealed with the Seal of the Principal Court of Probate in *England*, in pursuance of the Provisions of the "Confirmation and Probate Act, 1858," shall be valid and sufficient to constitute the Persons therein named the legal Personal Representatives of the Deceased with respect to such Notes and Moneys as aforesaid.

Probate, &c. or Confirmation granted in Scotland valid, &c.

Transfers of Territorial Debt and of Indian Government Loans not chargeable with Stamp Duty.

"II. So much of the Fifth Section of the said first-recited Act as enacts that every Transfer of any Part of the said Territorial Debt in the Books of the *East Indian* Company in *England*, whether upon a sale thereof or otherwise, shall be chargeable with a Stamp Duty of One Pound Ten Shillings and no more, is hereby repealed; and no Transfer of any Part of the said Territorial Debt or of *Indian* Government Loans registered and transferable in the Books of the Secretary of State in Council in *London*, or in the Books of the Governor and Company of the Bank of *England*, shall be chargeable with any Stamp Duty.

"III. Upon or for the Repayment of any Principal Money secured by the said Bonds, the Secretary of State in Council may at any Time borrow or raise, by all or any of the Modes authorized by the said recited Act passed in the Session holden in the Twenty-second and Twenty-third Years of Her present Majesty, Chapter Thirty-nine, all or any Part of the Principal Money so repaid or to be repaid, and so from Time to Time as all or any Part of the Principal Money secured by the said Bonds may have been repaid or require to be repaid, but the Amount to be charged upon the Revenues of *India* shall not in any Case exceed the Principal Money repaid or required to be repaid; and the Provisions of the said recited Act with reference to the Creation of the Capital Stock and Annuities created under the Authority of the said Act, and with reference to the Issue, Payment, and Transfer of the Capital Stock, Annuities, Bonds, and Debentures issued under the Authority of the said Act, shall be held to be in force and to apply to the Creation, Issue, Payment, and Transfer of the Capital Stock, Annuities, Bonds, and Debentures created and issued under the Authority of this Act."

Power to raise Money under Act 22 & 23 Vic., c. 39, extended to Repayment of East India Bonds.

Canal, Railway and other Shares in Public Companies.

The greater portion of this kind of property is personal estate, and has been made so for the greater convenience of transfer, but it may be as well to know that some property of this description is "*real* estate," of which the following are a few instances:—

Leeds Cloth Market,
Droitwich Canal,
Aire and Calder Canal,
Kennet and Avon Canal,
New River Company,

and some of the Welsh Railways.

"*All dividends, interest, rents, and apportionments thereof up to the date of the grant.*"

Before the passing of the 33 and 34 Vic., cap. 35, if the testator died between one half year and another, or one

quarter day and another, the current rent would not go to the executor as assets belonging to the estate of the deceased, but would pass to the devisee or heir-at-law in its entirety, and so with dividends on stocks and shares, payable at fixed periods, if the testator, having a life-interest in certain stocks and shares, happened to die between the two periods of payment he was not entitled to the proportion of the current dividend, but it would belong to the person entitled to succeed him. By the terms of the above Act, however, rents and dividends are now to be considered along with interest on all kinds of property as accruing from day to day, and, consequently, the proportion of rents of *freehold* and *copyhold property* up to the date of the *death*, and the rents of *leasehold*, as well as dividends and interest, are to be apportioned up to the date of the *grant*. A case bearing on this was tried in the Vice Chancellor's Court in January, 1874, Capron *v.* Capron (L. R., Eq., vol. xvii., fol. 288).

Deceased's Share of a Partnership Business.

It is a very common error for executors to include in the value of the assets for probate the *gross* share belonging to the testator in the partnership business, and afterwards apply for a return of the probate duty under the 5 and 6 Vic., cap. 79, sec. 23, in respect of his share of the partnership debts, forgetting that the executor of a deceased partner can neither sue or be sued as one of the firm, and that all that he is entitled to receive is the net amount of the share after the surviving partners have struck a balance; and it must not be forgotten that in the assets of the firm should be included the value of any real estate belonging thereto, purchased with partnership assets, which, by the decision in the case of Forbes *v.* Stevens (L R., 10 Eq., 178), was declared to be personal estate unless it is manifest by the deed to be the intention that each partner should have entire control of his undivided share therein.

The Proceeds of any Real Estate Contracted to be Sold by the Testator in his Lifetime.

Where the deceased has entered into any contract to sell all or any part of his real estate, and should happen to die before the contract has been completed, the amount of the contract money, although not received until after the death, will have to be included among the personal assets, for the purchaser can compel the executor or administrator to complete the contract, and consequently what he receives will be money and pass to the vendor's next of kin, should he die intestate and not to his heir-at-law. See Attorney-General *v.* Brunning (8 H. L. Cases, 243).

Any Personal Property over which Deceased has any absolute Power of Appointment, &c.

Before the 3rd April, 1860, this was omitted from the affidavit of value as a personal asset, butthe 23 Vic., cap. 15, declares that property of this description shall be liable to stamp duty, and the 4th and 5th sections enact as follows :— Sections 4 & 5

23 Vict. c. 15. Personal Estate appointed by Will under general Powers to be chargeable with Probate and Inventory Duties.

"IV. The Stamp Duties payable by Law upon Probates of Wills and Letters of Administration with a Will annexed, in *England* and *Ireland*, and upon Inventories in *Scotland*, shall be levied and paid in respect of all the Personal or Moveable Estate and Effects which any Person, hereafter dying, shall have disposed of, by Will, under any Authority enabling such Person to dispose of the same as he or she shall think fit; and for the purpose of this Act such Personal or Moveable Estate and Effects shall be deemed to be the Personal or Moveable Estate and Effects of the Person so dying in respect of which the Probate of the Will or the Letters of Administration with the Will annexed of such Person are or is granted, or the Inventory is or is required to be exhibited and recorded, as the Case may be: and such Estate and Effects, and the Value thereof, shall accordingly be included

in the Affidavit required by Law to be made on applying for Probate or Letters of Administration, in order to the full and proper Stamp Duty being paid."

Probate and Inventory Duties in respect thereof to be a Charge on the Property.

"V. The said last-mentioned Duties shall be a Charge or Burden upon the Property in respect of which the same are so payable, and shall be paid thereout by the Trustees or Owners thereof to the Person for the Time being lawfully having or taking the Burden of the Execution of the Will or Testamentary Instrument, or the Administration or Management of the Personal or Moveable Estate and Effects of the Deceased, for the Benefit of the Persons entitled to the Personal or Moveable Estate and Effects of the Deceased."

The Value of any Real Estate which under some prior Will or Instrument has been directed to be Sold.

Where the testator is entitled to the proceeds of some real estate directed to be sold under the trusts of some prior will or deed, but dies before the sale has taken place, it is considered, under the decisions in the cases of Attorney-General *v.* Brunning (8 H. L. Cases, 243), and Attorney-General *v.* Lomas (L. R., 9 Ex., 29), that the estate is converted in equity, and that the same passes to the executor as personal estate.

The Value of any Reversionary Property.

The law does not compel the executor to include the value of any reversionary property among the assets until it falls into possession, but should he do so the present value can easily be obtained by deducting the value of the income, according to the age of the life tenant (by table No. 1 annexed to the 16 and 17 Vic., cap. 51), from the capital sum, and the remainder will be the value required. In the event, however, of his omitting to include the value of the reversionary property in the original grant, he must, on that property fall-

ing into possession, add to the original assets, in considering the sufficiency of the probate stamp the full amount he will then receive, and not the value to be estimated at the date of the original grant (see the decision in the case of Lord *v.* Colvin, L. R., 3 Eq., 737), and should the total amount exceed the limit of value for which his original stamp was obtained he must pay the additional stamp duty necessary.

Heritable Bonds in Scotland.

Formerly, property of this description was excluded from the schedule of assets for the payment of inventory duty in Scotland, but the 23 Vic., cap. 15, placed them on the same footing as mortgages in this country, and made them liable to stamp duty. The 6th section of this Act declares as follows:—

23 Vic., c. 15. Money secured on Heritable Property and by Heritable Bonds in Scotland to be chargeable with Probate and Inventory Duties.

"VI. Money secured on Heritable Property in *Scotland*, and Money secured by *Scotch* Bonds in favour of Heirs and Assignees, excluding Executors, shall, for the Purposes of this Act, be held and interpreted to be Moveable Property, and shall be included in any Inventory to be exhibited and recorded in any Commissary Court in *Scotland* of the Estate and Effects of any Person deceased entitled thereto, and in *England* and *Ireland* respectively shall be deemed to be Estate and Effects for or in respect whereof any Probate of Will or Letters of Administration shall be granted; and every such Inventory, Probate, and Letters of Administration shall be chargeable with Stamp Duty in respect of such Moveable Property; and such Property, and the Value thereof, shall be included in any such Affidavit as aforesaid made on applying for Probate or Letters of Administration in respect thereof in *England* or *Ireland*."

Where a testator or intestate is a legatee under a will, and is at the same time indebted to the deceased from whom he takes the legacy, the executor or administrator will only receive the balance of such bequest after the deduction of the

debt, and this balance is all that he need insert in the schedule of his assets.

Property in the Isle of Man and the Channel Islands is not subject to the jurisdiction of the English Courts. Wills of common soldiers who shall be slain or die in Her Majesty's Service (which includes all below the rank of a sergeant) being exempt from duty, on the grant of probate or letters of administration being obtained, no stamp will have to be impressed thereon.

An executor need only prove the will of a foreigner or of a person dying in this country having a foreign domicile, in order to obtain possession of any property situate here, for as to the distribution of his assets, that will be governed by law of the land of which he was a native. In the case of De Capdevielle (2 Hurlst & Colt 985), tried before V. C. Malins, it having been decided that the domicile of the testator was French, his property was divided by the Judge of the Court in France according to the law of that country, although it was necessary to prove the will here for the executor to obtain possession of the assets in this country belonging to the deceased.

A Table of Stamp Duties on Grants of Probate.

Where the Estate and Effects shall be—			Testate £
Above the value of 20*l.*	and under...	100*l.*...	Exempt
100*l.*	and under...	200*l.*...	2
200*l.*	and under...	300*l.*...	5
300*l.*	and under...	450*l.*...	8
450*l.*	and under...	600*l.*...	11
600*l.*	and under...	800*l.*...	15
800*l.*	and under...	1,000*l.*...	22
1,000*l.*	and under...	1,500*l.*...	30
1,500*l.*	and under...	2,000*l.*...	40
2,000*l.*	and under...	3,000*l.*...	50
3,000*l.*	and under...	4,000*l.*...	60
4,000*l.*	and under...	5,000*l.*...	80
5,000*l.*	and under...	6,000*l.*...	100
6,000*l.*	and under...	7,000*l.*...	120
7,000*l.*	and under...	8,000*l.*...	140

STAMP DUTIES ON GRANTS OF PROBATE—*continued.*

Where the Estate and Effects shall be—			Testate. £
8,000*l.*	and under...	9,000*l.*...	160
9,000*l.*	and under...	10,000*l.*...	180
10,000*l.*	and under...	12,000*l.*...	200
12,000*l.*	and under...	14,000*l.*...	220
14,000*l.*	and under...	16,000*l.*...	250
16,000*l.*	and under...	18,000*l.*...	280
18,000*l.*	and under...	20,000*l.*...	310
20,000*l.*	and under...	25,000*l.*...	350
25,000*l.*	and under...	30,000*l.*...	400
30,000*l.*	and under...	35,000*l.*...	450
35,000*l.*	and under...	40,000*l.*...	525
40,000*l.*	and under...	45,000*l.*...	600
45,000*l.*	and under...	50,000*l.*...	675
50,000*l.*	and under...	60,000*l.*...	750
60,000*l.*	and under...	70,000*l.*...	900
70,000*l.*	and under...	80,000*l.*...	1,050
80,000*l.*	and under...	90,000*l.*...	1,200
90,000*l*	and under...	100,000*l.*...	1,350
100,000*l.*	and under...	120,000*l.*...	1,500
120,000*l.*	and under...	140,000*l.*...	1,800
140,000*l.*	and under...	160,000*l.*...	2,100
160,000*l.*	and under...	180,000*l.*...	2,400
180,000*l.*	and under...	200,000*l.*...	2,700
200,000*l.*	and under...	250,000*l.*...	3,000
250,000*l.*	and under...	300,000*l.*...	3,750
300,000*l.*	and under...	350,000*l.*...	4,500
350,000*l.*	and under...	400,000*l.*...	5,250
400,000*l.*	and under...	500,000*l.*...	6,000
500,000*l*	and under...	600,000*l.*...	7,500
600,000*l.*	and under...	700,000*l.*...	9,000
700,000*l.*	and under...	800,000*l.*...	10,500
800,000*l.*	and under...	900,000*l.*...	12,000
900,000*l.*	and under...	1,000,000*l.*...	13,500
1,000,000*l.*	and upwards for every 100,000*l.* and any fractional part of 100,000*l.*.....		1,500

EXEMPTIONS.

Probate of Will and Letters of Administration of the Effects of any common Seaman, Marine, or Soldier, who shall be slain or die in Her Majesty's Service.

Having obtained, by means of such a schedule as that previously given, a rough estimate of the value of the personal property of the deceased, the next step to be taken by the executor is to proceed to obtain the grant of the probate of the will with the Seal of the Court attached. During the existence of the old Probate Court at Doctors Commons, proving a will was a serious undertaking, and one that could not be and was not allowed to be undertaken without the aid of a proctor, but since the passing of the 20 and 21 Vic., cap. 77, all this has been abolished, and the practice of the Probate Court, now the "Probate, Divorce and Admiralty Division of the High Court of Justice," has been thrown open to proctors and solicitors alike, and the mode of procedure so simplified that with very little aid an executor may obtain probate without much difficulty or inconvenience.

A will may be proved in London at the Principal Registry in the Probate Office at Somerset House in the Strand, or at the district registry nearest to the deceased person's place of residence, and in order to assist the executor in ascertaining which of the district registries he should apply to, I annex a list of all the registries in the kingdom.

DISTRICTS AND PLACES OF DISTRICT REGISTRIES THROUGHOUT ENGLAND AND WALES.

Districts.	Places of District Registries.
County of Northumberland (*a*)	Newcastle-on-Tyne
County of Durham	Durham
Counties of Cumberland and Westmoreland...	Carlisle

Districts.	Places of District Registries.
West Riding of the County of York ...	Wakefield
North Riding ditto	York
East Riding, ditto (*b*) including the City of York and Ainsty	York
County of Lancaster, except the Hundred of Salford and West Derby and the City of Manchester	Lancaster
City of Manchester and Hundred of Salford	Manchester
Hundred of West Derby in Lancashire ...	Liverpool
County of Chester (*c*)	Chester
Counties of Carnarvon and Anglesea ...	Bangor
Counties of Flint, Denbigh and Merioneth	St. Asaph
County of Derby	Derby
County of Nottingham (*d*)	Nottingham
Counties of Leicester and Rutland	Leicester
County of Lincoln (*e*)	Lincoln
Counties of Salop and Montgomery ...	Shrewsbury
Northern Division of Northampton, and Counties of Huntingdon and Cambridge (*f*)	Peterb'rough
County of Norfolk (*g*).	Norwich
Eastern Division of the County of Suffolk and North Division of the County of Essex.	Ipswich
Western Division of the County of Suffolk	Bury St. Edmunds.
County of Bedford and Southern Division of Northamptonshire. (*h*)	North'mpton
County of Warwick (*i*)	Birmingham
County of Stafford (*k*)	Lichfield
Counties of Radnor, Brecknock, and Hereford	Hereford
Counties of Cardigan, Carmarthen (*l*), and Pembroke (*m*) with the Deaneries of East and West Gower in the County of Glamorgan.	Carmarthen

(*a*) Including the Towns and Counties of Newcastle-on-Tyne and Berwick-upon-Tweed.
(*b*) Including the Town and County of Kingston-on-Hull.
(*c*) Including the City of Chester.
(*d*) Including the Town of Nottingham.
(*e*) Including the City of Lincoln.
(*f*) Including the University of Cambridge.
(*g*) Including the City of Norwich.
(*h*) Including the Tn. of Northampton
(*i*) Including the Cit of Coventry.
(*k*) Including the Cit of Lichfield.
(*l*) Including the Town of Carmarthen.
(*m*) Including the Town of Haverfordwest.

Districts.	Places of District Registries.
Counties of Glamorgan (with the exception of the Deaneries of East and West Gower) and Monmouth.	Llandaff
County of Worcester (*n*)	Worcester
County of Gloucester (*o*), except the present Bristol County Court District	Gloucester
Bristol and Bath present County Court Districts	Bristol
Counties of Oxford (*p*), Berks, Bucks ...	Oxford
Eastern Division of the County of Somerset, Except the present Bath County Court District, and the part in Somersetshire of the present Bristol County Court District	Wells
Western Division of the County of Somerset	Taunton
County of Devon (*q*)	Exeter
County of Cornwall	Bodmin
County of Wilts	Salisbury
County of Dorset (*r*)...	Blandford
County of Hants (*s*)	Winchester
Eastern Division of the County of Sussex (*t*)	Lewes
Western Division of the County of Sussex...	Chichester
East Division of the County of Kent (*u*) ...	Canterbury

The Divisions of Counties referred to in the Schedule are the Divisions of the same Counties described for Election Purposes in the Act of the second and third years of King William the Fourth, Chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

(*n*) Including the City of Worcester.
(*o*) Including the City of Gloucester.
(*p*) Including the University of Oxford.
(*q*) Including the City of Exeter.
(*r*) Including the Town of Poole.
(*s*) Including the Town of Southampton and Isle of Wight.
(*t*) Including such of the Cinque Ports and their Dependencies as are locally situate in the County of Sussex.
(*u*) Including the City of Canterbury and such of the Cinque Ports and their Dependencies as are locally situate in the County of Kent.

It need only be added that should an executor decide upon proving the will himself without legal assistance, he can do so on application to the Personal Enquiry Office at the Principal Registry at Somerset House.

Having decided in which registry he will prove the will (district or principal), the next proceeding on the part of the executor will be to fill up the proper forms of affidavit, examples of which are appended, one for the Court and one for the Inland Revenue Office, care being taken should there be any leasehold property (or leasehold property mortgaged), to select those which apply to the cases of that description.

The affidavit must be sworn before a Commissioner of the High Court of Justice, or at the Probate Office itself. The proving the will takes from four to five days, and the fees payable, which depend upon the amount of the property and the length of the will, are regulated by a Government table, and are payable by means of stamps only, which can be obtained of the officials at the Registry. Should the deceased die possessed of property in Scotland and Ireland as well as in England, the executor may, if he pleases, include the value of the entire property, English, Scotch and Irish, in the one grant of probate, but should that grant be taken out originally in the Probate Court in Ireland, the executor will not be able to obtain possession of the English assets until he has had the Seal of the English Court affixed to the grant, and in order to obtain this it will be necessary for him to apply to the Probate Branch of the Inland Revenue Department at Somerset House, to obtain a certificate for the Probate Court before the Registrar will direct the Seal of the Court to be annexed. To obtain this certificate the executor must present a composite schedule of the property, which he can obtain from the Registrar of the district in which the original grant was taken out. A form of this schedule is annexed; and it must be sworn to before a Commissioner of the High Court of Justice.

PROBATE COMPOSITE SCHEDULE OF PROPERTY.

IN HER MAJESTY'S COURT OF PROBATE IN IRELAND

THE DISTRICT REGISTRY OF

In the Goods of }
Deceased. }

of the Executors named in the last Will and Testament of
late of
in the County of deceased, who died on the
day of one thousand eight hundred and
domiciled in Ireland, make Oath and say that the said deceased, at
the time of his death had a fixed place of abode within the said District, to wit, at
in the County of and that I have
made diligent search and due inquiry after and in respect of the personal Estate and Effects of the said deceased, in order to ascertain the full amount and value thereof; and that, according to the best of knowledge, information, and belief, the whole of the Goods and Chattels, Rights and Credits, of which said deceased died possessed, or to which he was entitled, and of the personal and movable Estate and Effects which the deceased has disposed of by his Will aforesaid, under an authority enabling him to dispose of the same as he should think fit—consisting of the Property, Moneys, Securities, Matters, and things specified in the Accounts Number 1, 2, and 3, annexed to this Affidavit, are under the value of
Pounds
exclusive of what said deceased may have been possessed of, or entitled to, as a Trustee for any other person or persons, and not beneficially, and without deducting anything on account of the Debts due and owing from said deceased, and that according to the knowledge, information, and belief of deponent said deceased was not possessed of or entitled to any other personal Estate and Effects at the time of death in Great Britain and Ireland, that the property set forth in Schedule Number 1, hereto annexed, and amounting to the sum of
is in Ireland; that the property set forth in Schedule Number 2, hereto annexed, and amounting to the sum of is in England; and that the property set forth in the Schedule Number 3, hereto annexed, and amounting to the sum of
is in Scotland.

Sworn by the said

on the day of 187 *, before me, at*

and I know

I Certify that the above is the AFFIDAVIT of

as received by me, the District Registrar of , on the application of

deceased, and that

whose name subscribed to the Jurat thereof, is the proper Officer for administering the usual Oath for the due Administration of the Estate and Effects of the deceased.

Dated day of 187

District Registrar.

ACCOUNT No. 1,

OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE

In Ireland.

		£	s.	d.
Household Goods, Linen, Wearing Apparel, Books, Plate, Jewels, &c. [*Supposed value to be inserted in column, according to the best of administrator's belief.*]				
Property in the Stocks, or Funds, transferable at the Bank. [*The Amount of Stocks (if any) to be valued at the price of the day, and their nature described, and the value to be brought into the column, the interest due thereon to be inserted separately, and calculated to the time of making the affidavit.*]	PRICE OF STOCKS.			
Leasehold Property. [*If the Deceased held any Leases for years determinable, state the number of years' purchase the Profit Rents are supposed to be worth, and bring the value of such into the column, inserting arrears due at the time of death, and all Rents received or due since that period to the present time in a separate line.*]				
Property in Public Companies. [*If any, describe the particulars and bring the value (calculated at the price of the day) into the column, inserting the interest separately, and calculating the same to the present time. Insurances come under this head.*]				
Money out on Mortgage, and other Securities. [*Such as Bonds, Mortgages, Bills, Notes, or other securities for Money, bringing the amount of the entire into the column, inserting the interest separately, and calculating the same to the present time.*]				
Stock in Trade, Farming Stock, and Implements of Husbandry. [*Supposed value (if any) to be brought into the column.*]				
Other Personal Property not comprised under the foregoing heads. [*Such as Cash, Arrears of Rent, &c., supposed amount to be brought into the column.*]				
Carried forward ... £				

ACCOUNT No. 2,

OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE

In England.

	£	s.	d.
Brought forward ...			
ACCOUNT No. 3, OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE *In Scotland.*			
Total			

ADMON. COMPOSITE SCHEDULE OF PROPERTY.

IN HER MAJESTY'S COURT OF PROBATE IN IRELAND.

DISTRICT REGISTRY OF

In the Goods of I,

of in the

of.

Deceased, (in order to the due administration of the personal

Intestate. Estate and Effects of

late of

in the of Deceased, Intestate,
who died on the day of One thousand eight
hundred and domiciled in Ireland), make Oath and say that the said
Deceased, at the time of h death, had a fixed place of abode, to wit, at
in the County of and that I have
made diligent search and due enquiry after and in respect of the personal Estate and
Effects of the said Deceased, in order to ascertain the full amount and value thereof;
and that according to the best of knowledge, information, and belief, the whole
of the Goods and Chattels, Rights and Credits, of which said Deceased died possessed,
or to which he was entitled—consisting of the Properties, Moneys, Securities, Matters,
and things specified in the Accounts Number 1, 2 and 3, annexed to this Affidavit, are
under the value of

Pounds

exclusive of what said Deceased may have been possessed of,
or entitled to, as a Trustee for any other person or persons, and not beneficially, and
without deducting anything on account of the Debts due and owing from said Deceased,
and that according to my knowledge, information, and belief, said Deceased was not
possessed of or entitled to any other personal Estate and Effects at the time of
death in Great Britain and Ireland, that the property set forth in Schedule Number 1,
hereto annexed, and amounting to the sum of
is in Ireland; that the Property set forth in Schedule Number 2, hereto annexed, and
amounting to the sum of
is in England; and that the Property set forth in the Schedule Number 3, hereto
annexed, and amounting to the sum of
is in Scotland

Sworn by the said *at*
on the *day of* 187 , *before me,*
and I know
who certifies his knowledge of Deponent.

I certify that the above is the AFFIDAVIT of
as received by me, the District Registrar, on the application of
Deceased, and that
whose name subscribed to the Jurat thereof, is the proper Officer for administering the
usual Oath for the due Administration of the Estate and Effects of the Deceased.

Dated *day of* 187

District Registrar.

ACCOUNT No. 1,

OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE

In Ireland.

		£	s.
Household Goods, Linen, Wearing Apparel, Books, Plate, Jewels, &c. [*Supposed value to be inserted in column, according to the best of administrator's belief.*]			
Property in the Stocks or Funds, transferable at the Bank. [*The amount of Stocks (if any) to be valued at the price of the day, and their nature described, and the value to be brought into the column, the interest due thereon to be inserted separately, and calculated to the time of making the affidavit.*]	PRICE OF STOCKS.		
Leasehold Property. [*If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are supposed to be worth and bring the value of such into the column, inserting arrears due at the time of death and all Rents received or due since that period to the present time in a separate line.*]			
Property in Public Companies. [*If any, describe the particulars and bring the value (calculated at the price of the day) into the column, inserting the interest separately, and calculating the same to the present time. Insurances come under this head.*]			
Money out on Mortgage and other Securities. [*Such as Bonds, Mortgages, Bills, Notes, or other securities for Money, bringing the amount of the entire into the column, inserting the interest separately, and calculating the same to the present time.*]			
Stock in Trade, Farming Stock, and Implements of Husbandry. [*Supposed value (if any) to be brought into the column.*]			
Other Personal Property not comprised under the foregoing heads. [*Such as Cash, Arrears of Rent, &c., supposed amount to be brought into the column.*] *Carried forward* ... £			

ACCOUNT No. 2,

OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE

In England.

	£	s.
Brought forward ...		

ACCOUNT No. 3,

OF THE PERSONAL ESTATE AND EFFECTS OF THE LATE

In Scotland.

Total ... £		

But should he require the Scotch Seal of Confirmation to be attached to the original grant, his course will be to apply to the Commissary Clerk in Edinburgh, in accordance with the terms of the 14th Section, 21 and 22 Vic., cap. 56, which are as follows :—

Section 14. 21 & 22 Vic., cap. 56.

Section 14.—"From and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in *England* to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in *England*, or by the Court of Probate in *Ireland*, to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the County of *Edinburgh*, and a copy thereof deposited with the Commissary Clerk of the said Court, the Commissary Clerk shall write, or endorse on the back or face of such grant, a certificate in the form as near as may be of the Schedule (F) hereunto annexed, and such probate or letters of administration being duly stamped shall be of the like force and effect and have the same operation in Scotland as if a confirmation had been granted by the said Court.

SCHEDULE F.

I, A. B., Commissary Clerk (or Commissary Clerk depute), of the County of Edinburgh, hereby certify that this grant of Probate has (or these Letters of Administration have) been produced in the Commissary Court of the said County, and that a Copy thereof has been deposited with me."

A few of the rules and instructions, published by the authority of the Court of Probate, necessary to be observed, are here annexed, along with the forms of affidavits to be used in applying for the grant of probate of a will or letters of administration of an intestate's estate in the Principal and District Registries.

PRINCIPAL REGISTRY.

NON-CONTENTIOUS BUSINESS.

The following Rules, Orders, and Instructions in respect of non-contentious business shall take effect on and after the 1st day of September, 1862:—

Non-contentious Business shall include all common form business as defined by the 'Court of Probate Act, 1857," and the warning of Caveats.

"1. Application for Probate or Letters of Administration may be made at the Principal Registry in all cases.

"2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration; but these latter applications will not be received by letter, nor through the medium of any agent.

"3. The Registrars are not to allow Probate or Letters of Administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The Registrars are, notwithstanding, to afford as great facility for the obtaining grants of Probate or Administration as is consistent with a due regard to the prevention of error or fraud."

AS TO PROBATE OF WILLS AND CODICILS AND LETTERS OF ADMINISTRATION WITH THE WILL OR [WILL AND CODICILS] ANNEXED, WHERE THE WILLS AND CODICILS ARE DATED AFTER 31ST DECEMBER, 1837.

Execution of a Will.

"4. If there be no attestation clause to a Will or Codicil presented for Probate, or if the attestation clause thereto be insufficient, the Registrars must require an affidavit from at Rules of Court.

Rules of Court.

least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, sect. 9, and 15 Vict. c. 24, in reference to the execution were in fact complied with.

"4*a*. The practice of registering affidavits shall be discontinued, and, in lieu thereof, a note signed by a Registrar shall be inserted on the engrossed copy Will or Codicil annexed to the Probate or Letters of Administration, and registered, to the effect that affidavits of due execution, of domicil, or as the case may be, have been filed: Provided, that in cases presenting difficulty the affidavits themselves may still be registered by direction of a Registrar.

"5. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the Registrars must refuse Probate.

"6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the Will or Codicil has been duly executed, the Registrars may require the parties to bring the matter before the Judge on motion.

"7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the Will or Codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution."

Interlineations and Alterations.

"8. Interlineations and alterations are invalid unless they existed in the Will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the Will, or by the subsequent execution of a Codicil thereto.

"9. When interlineations or alterations appear in the Will (unless duly executed, or recited in, or otherwise identified by, the attestation clause), an affidavit or affidavits in proof of their having existed in the Will before its execution must be

filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses." Rules of Court.

Erasures and Obliterations.

"10. Erasures and obliterations are not to prevail unless proved to have existed in the Will at the time of its execution, or unless the alterations thereby effected in the Will are duly executed and attested, or unless they have been rendered valid by the re-execution of the Will, or by the subsequent execution of a Codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the Probate.

"11. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required."

Deeds, &c. referred to in a Will or Codicil.

"12. If a Will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the Will, the production of such deed, paper, memorandum, or other document must be required, with a view to ascertain whether it be entitled to Probate; and if not produced, its non-production must be accounted for.

"13. No deed, paper, memorandum, or other document can form part of a Will unless it was in existence at the time when the Will was executed."

Appearance of the Paper.

"14. If there are any vestiges of sealing-wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has

Rules of Court.

been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and, if not produced, its non-production must be accounted for."

Married Woman's Will.

"15. In granting Probate of a married woman's Will made by virtue of a power or Administration with such Will annexed, the power under which the Will purports to have been made must be specified in the grant."

Codicils.

"16. The above rules and orders respecting Wills apply equally to Codicils."

AS TO LETTERS OF ADMINISTRATION.

Notice to other Next of Kin.

"28. Where Administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the Registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin."

Limited Administrations.

"29. Limited Administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

"30. No person entitled to a general Grant of Administration of the personal estate and effects of the deceased, will be permitted to take a limited grant, except under the direction of the Judge."

Administrations under Section 73.

"31. Whenever the Court under Section 73 appoints an

administrator other than the person who prior to the "Court of Probate Act, 1857," would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the Letters of Administration, and in the Administration Bond." Rules of Court.

Grants to an Attorney.

"32. In the case of a person residing out of England, Administration, or Administration with the Will annexed, may be granted to his attorney, acting under a power of attorney."

Grants of Administration to Guardians.

"33. Grants of Administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

"34. In cases of infants (*i.e.* under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge or of one of the Registrars; the Registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

"35. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the Judge or a Registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the Judge or of a Registrar.

"36. In all cases where Grants of Administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the

Rules of Court.

effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the testamentary guardians of the minors or infants."

Administrator's Oath.

"37. The oath of administrators, and of administrators with the Will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next of kin, or one of the next of kin, of the deceased. In all Administrations of a special character the recitals in the oath and in the Letters of Administration must be framed in accordance with the facts of the case."

Administration Bonds.

"38. Administration Bonds are to be attested by an officer of the Principal Registry, by a District Registrar, or by a Commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such Bonds, if not taken in the Principal Registry, must be attested by the same person who administers the oath to such administrator or administratrix.

"39. In all cases of limited or special Administration two sureties are to be required to the Administration Bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the Bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.

"40. The Administration Bond is in all cases of Limited or Special Administrations, to be prepared in the Registry.

"41. The Registrars are to take care (as far as possible) that the sureties to Administration Bonds are responsible persons." Rules of Court.

Justification of Sureties.

"42. When any person takes Letters of Administration in default of the appearance of persons cited, but not personally served, with the citation, and when any person takes Letters of Administration for the use and benefit of a lunatic or person of unsound mind, unless he be a Committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the Registry, and the sureties to the Administration Bond must justify."

GENERAL RULES AND ORDERS FOR THE REGISTRARS OF THE PRINCIPAL REGISTRY.

Time of issuing Grant.

"43. No Probate or Letters of Administration, with the Will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars.

"44. No Letters of Administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars.

"45. In every case where Probate or Administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the Registrars. Should the certificate be unsatisfactory the Registrars are to require such proof of the alleged cause of delay as they may see fit."

Filling up Grants.

"46. All Probates or Letters of Administration issued from the Principal Registry are to be filled up there."

Rules of Court.

Oath of Executors and Administrators.

"47. The usual oath of administrators, as well as that of executors and administrators with the Will, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry."

Identity of Parties.

"48. The Registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant."

Testamentary Papers to be marked.

"49. Every Will, copy of a Will, or other testamentary paper, to which an executor or administrator with the Will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn."

Renunciations.

"50. No person who renounces Probate of a Will or Letters of Administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character."

Affidavits.

"51. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

"52. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

"53. No affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure.

"54. Where an affidavit is made by any person who is

blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature, in the presence of the Registrar, Commissioner, or other authority before whom the affidavit was made. Rules of Court.

"55. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a partner or clerk of his proctor, solicitor, or attorney.

"56. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

"57. In every case where an affidavit is made by a subscribing witness to a Will or Codicil, such subscribing witness shall depose as to the mode in which the said Will or Codicil was executed and attested.

"58. The Registrars are not to allow any affidavit to be filed (unless by leave of the Judge) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the Commissioner, or other person before whom it was sworn."

Blind and Illiterate Testators.

"71. The Registrars are not to allow Probate of the Will, or Administration with the Will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said Will was read over to the Testator before its execution, or that the Testator had at such time knowledge of its contents."

Alterations in Grants, &c.

"72. Whenever the value of the personal estate and effects

Rules of Court.

of a deceased person is re-sworn under a different amount, or any alteration is made in a grant, or a grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the District Registrars, notice of such re-swearing, alteration, or revocation is without delay to be forwarded by the Registrars of the Principal Registry to all the District Registrars."

Irish Grants.

"73. The Seal is not to be affixed to any Probate or Letters of Administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless it appear from a Certificate of the Commissioners of Inland Revenue, or their proper officer, that such Probate or Letters of Administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect to Letters of Administration, the provisions of statute 21 & 22 Vict., c. 95, s. 29, must also be complied with."

Grants for Property in the United Kingdom.

"74. Whenever a grant of Probate or of Letters of Administration is made under statute 21 & 22 Vict., c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict., c. 80, and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed. Upon all such grants a note or memorandum must also be written and signed by one of the Registrars to the effect that the testator or intestate died domiciled in England."

TAXING BILLS OF COSTS.

"88. Any Bill of Costs may be referred to the Registrars of

the Principal Registry for taxation, and no special order shall hereafter be required for the purpose. Rules of Court.

"89. The Bill of Costs of any proctor, solicitor, or attorney will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner, and the Registrar shall decide in each case what may be a sufficient notice.

"90. When an appointment has been made by a Registrar to tax a bill, the Registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party, or his agent, provided he be satisfied that the absent party has had due notice of the appointment for taxation.

"91. If more than one-sixth is deducted from any Bill of Costs taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill."

DISTRICT REGISTRIES.

The following Rules, Orders and Instructions in respect of Non-contentious Business shall take effect on and after the second day of March, 1863:—

Non-contentious Business shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of Caveats.

"1. Application for Probate or Letters of Administration may be made at the Principal Registry in all cases. Application may also be made at a District Registry in cases where the deceased, at the time of his death, had a fixed place of abode within the district in which the application is made, and not otherwise.

"2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to Grants of Administration.

"3. The District Registrar, before he entertains any application for Probate or Letters of Administration, must ascertain that the deceased had, at the time of his death, a fixed place of abode within his district.

Rules of Court.

"4. The District Registrar is not to allow Probate or Letters of Administration to issue until all inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made in person by executors and others. The District Registrar is notwithstanding to afford as great facility for the obtaining grants of Probate or Administration as is consistent with a due regard to the prevention of error or fraud.

"5. No District Registrar or clerk in a District Registry shall directly or indirectly transact business for himself or as the proctor or solicitor of any other person in the District Registry to which he has been appointed."

Doubtful Cases.

"20. If it be doubtful whether any Will or Codicil be entitled to Probate, or whether any interlineation, alteration, erasure, or obliteration ought to prevail, or whether any deed, paper, memorandum, or other document ought to form part of a Will or Codicil, or if any doubt arise in consequence of the appearance of the paper, or on any other point, the District Registrar must communicate with the Registrars of the Principal Registry.

Letters of Administration with Will annexed.

"21. The right of parties to Letters of Administration with the Will annexed, and Letters of Administration with the Will annexed *de bonis non,* depends so entirely upon the circumstances of each particular case taken in connexion with the wording of the Will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the District Registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the Will, must be transmitted to the Registrars of the Principal Registry, who will advise thereon.

Last Wills.

"50. The District Registrar is not, in any case in which a

Will apparently duly executed has been produced to him for Probate or for Administration with the Will annexed, to grant Probate of any former Will, or Administration with any former Will annexed, or Administration to the deceased, as having died intestate, without an order of the Judge or of one of the Registrars of the Principal Registry, showing that the last Will is not entitled to Probate. In the absence of such order the District Registrar is to communicate with the Registrars of the Principal Registry." Rules of Court.

FORMS OF JURAT.

If one Deponent only—
Sworn at on the
day of 18 ,

Before me,

If more than one Deponent—
Sworn by the said and (*give the christian and surnames of each Deponent*) at
on the day of 18 ,

Before me,

If the Deponent be a marksman—
Sworn by the said at on
the day of 18 , this affidavit having been first read over to him [*or* her], who seemed perfectly to understand the same, and made his [*or* her] mark thereto in my presence,

Before me,

N.B.—In all cases of affirmation the exact words prescribed by the statute applicable to the particular case must be used, and none other will be received.

[OATH FOR EXECUTORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) **THE PRINCIPAL REGISTRY.**

In the Goods of

Insert the Names, Residences and Titles, or Professions of the Executors making the Oath.

If related to the deceased, state in what degree.

[or solemnly, sincerely, and truly declare and affirm.]

make Oath and say, that believe the paper writing hereto annexed, and marked by to contain the true and original last Will and Testament of

Each Testamentary paper to be marked by each party sworn, and by the person administering the Oath.

deceased; and that therein named, and that will well and faithfully administer the personal Estate and Effects of the said Testat by paying just debts, and the legacies contained in Will so far as the same shall thereto extend and the law bind ; that will exhibit a true and perfect Inventory of all and singular the said Estate and Effects, and render a just and true account thereof whenever required by law so to do; that the Testat died at

Insert place of death, or set forth the reason why the same cannot be furnished.

on the day of 18;

FORMS OF JURAT.

If one Deponent only.

"*Sworn at on the &c.*"

If more than one Deponent.

"*Sworn by the said and at on the &c.*"

and that the whole of the personal Estate and Effects of the said Testat does not amount in value to the sum of pounds, to the best of knowledge, information and belief.

Sworn

on the day of

18 before me,

Affidavit.—Inland Revenue

Leaseholds.

[FOR EXECUTORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE). THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

[or solemnly, sincerely, and truly declare and affirm.] make Oath that Execut named in the last Will and Testament of late of

Insert Codicils, if any.

deceased: that the said deceased died on the day of in the Year of our Lord One thousand eight hundred and at

Insert place of death.

and that the personal Estate and Effects of the said deceased which any way died possessed of or entitled to, and for or in respect of which a Probate of the said Will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, but inclusive of all personal Estate and Effects which the said deceased under any authority enabling to dispose of the same as might think fit has disposed of by said Will including the Leasehold Estate or Estates for years, of the said deceased, whether absolute or determinable on a life or lives, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of Pounds, to the best of knowledge, information and belief.

FORMS OF JURAT.

If one Deponent only "*Sworn at on the &c.*"

If more than one Deponent. "*Sworn by the said and at on the &c.*"

Sworn

on the day of 18 before me

Affidavit.—Inland Revenue.

No Leaseholds.

[FOR EXECUTORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

[or solemnly, sincerely, and truly declare and affirm.]

Insert Codicils, if any.

make oath that
Execut named in the last Will and Testament
of
late of

deceased: that the said deceased died on the day
of in the Year of our
Lord One thousand eight hundred and
at

Insert place of death.

and that the personal Estate and Effects of the said deceased which any way died possessed of or entitled to, and for or in respect of which a Probate of the said Will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, but inclusive of all personal Estate and Effects which the said deceased under any authority enabling to dispose of the same as might think fit has disposed of by said Will and without deducting anything on account of the debts due and owing from the said deceased, are under the value of
Pounds, to the best of knowledge, information and belief. And lastly make Oath that the said deceased was not possessed of or entitled to any Leasehold Estate or Estates for years, either absolute or determinable on a life or lives, to the best of knowledge, information and belief.

FORMS OF JURAT.

If one Deponent only.
"*Sworn at on the &c.*"
If more than one Deponent
"*Sworn by the said and at on the &c.*"

Sworn

on the day of
18 before me

[Affidavit where Deceased died, owing Mortgage debts secured on Leaseholds.]

Affidavit.—Inland Revenue.

[FOR EXECUTORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE). THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences, and Titles, or Professions of the Persons making the Affidavit.

* The sole Executor, one of the Executors, *or* as the case may be.

*Execut
named in the last Will and Testament
of
late of

Insert Codicils, if any.

[or solemnly, sincerely, and truly declare and affirm.]

deceased, who died on the day of 18 [*make oath*] that have made diligent search and due inquiry after and in respect of the personal Estate and Effects of the said deceased, in order to ascertain the full amount and value thereof, and that to the best of knowledge, information and belief, the whole of the Goods and Chattels, Rights and Credits of which the said deceased died possessed*

"my" or "our."

* If deceased died on or after April 3rd, 1890, insert this clause:—Including any personal Estate and Effects which the deceased had disposed of under Will aforesaid, under any authority, enabling to dispose of the same as should think fit. Here state briefly the date and particulars of the Mortgage security in respect of every debt deducted.

are under the value of pounds, exclusive of what the deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, and without deducting anything on account of the Debts due and owing from the deceased, except in respect of Leaseholds in Mortgage, and further that the particulars of the debt so deducted are as follows, that is to say

and that the said Leaseholds are the sole security by way of Mortgage for the said debt

FORMS OF JURAT.

If one Deponent only.

"*Sworn at on the &c.*"

If more than one Deponent.

"*Sworn by the said and at on the &c.*

Sworn

on the day of 18 before me.

[OATH FOR ADMINISTRATORS, WITH THE WILL ANNEXED.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Parties applying for Administration with the Will annexed.

[or solemnly affirm.] Each Testamentary paper to be marked by each party sworn, and by the person administering the Oath.

make Oath and say that believe the paper writing hereunto annexed, and marked by to contain the true and original last Will and Testament of

deceased;

Here state the manner in which all persons having a prior right are cleared off.

and that

Here state the capacity in which the parties apply for Administration, with the Will annexed.

and that

and that will well and faithfully administer the personal Estate and Effects of the said deceased by paying just debts, and the legacies contained in Will and distributing the residue of Estate according to law; that will exhibit a true and perfect Inventory of all and singular the said personal Estate and Effects, and render a just and true account thereof whenever required by law so to do; that the Testat died at

Insert place of death, or set forth the reason why the same cannot be furnished.

FORMS OF JURAT.

If one deponent only.

Sworn at on the &c."

If more than one Deponent.

Sworn by the at and at on the &c."

on the day of 18 and that the whole of the personal Estate and Effects of the said deceased does not amount in value to the sum of pounds, to the best knowledge, information and belief.

Sworn

the day of 18 before me

Affidavit.—Inland Revenue.

Leaseholds.

[FOR ADMINISTRATORS WITH THE WILL.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

Insert Codicils, if any.

the part applying for Letters of Administration (with the Will annexed) of the personal Estate and Effects of late of

[or solemnly, sincerely, and truly affirm and declare.]

deceased, make Oath that the said deceased died on the day of One thousand hundred and at

Insert place of Death

and that the personal Estate and Effects of the said deceased which any way died possessed of or entitled to, and for or in respect of which Letters of Administration with the said Will annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, but inclusive of all personal Estate and Effects which the said deceased under any authority enabling to dispose of the same as might think fit has disposed of by said Will including the Leasehold Estate or Estates for years of the said deceased, whether absolute or determinable on a life or lives, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of Pounds, to the best of knowledge information and belief.

FORMS OF JURAT.

If one deponent only.
"*Sworn at on the &c.*"

If more than one Deponent.
"*Sworn by the said and at on the &c.*"

Sworn

on the 18 day of before me

Affidavit.—Inland Revenue.

No Leaseholds.

[FOR ADMINISTRATORS WITH THE WILL.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

Insert Codicils, if any.

the part applying for Letters of Administration (with the Will annexed) of the personal Estate and Effects of late of

[or solemnly, sincerely, and truly affirm and declare.]

deceased make Oath that the said deceased died on the day of One thousand hundred and , at

Insert place of death.

and that the personal Estate and Effects of the said deceased which any way died possessed of or entitled to, and for or in respect of which Letters of Administration with the said Will annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, but inclusive of all personal Estate and Effects which the said deceased under any authority enabling to dispose of the same as might think fit has disposed of by said Will and without deducting anything on account of the debts due and owing from the said deceased, are under the value of Pounds, to the best of knowledge, information and belief. And lastly make Oath that the said deceased was not possessed of or entitled to any Leasehold Estate or Estates for years, either absolute or determinable on a life or lives, to the best of knowledge, information and belief.

FORMS OF JURAT.

If one deponent only.
"*Sworn at on the &c.*"

If more than one Deponent.
"*Sworn by the said and at on the &c.*"

Sworn

on the day of 18 before me

[FOR ADMINISTRATORS WITH THE WILL.]

[Affidavits where deceased died, owing Mortgage debts secured on Leaseholds.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles, or Professions of the Persons making the Affidavit.

Insert Codicils, if any.

the part applying for Letters of Administration (with the Will annexed) of the personal Estate and Effects of late of

deceased, in order to the due Administration of the personal Estate and Effects of the said deceased, who died on the day of 18 *make Oath* that have made diligent search and due inquiry after and in respect of the Personal Estate and Effects of the said deceased, in order to ascertain the full amount and value thereof, and that to the best of knowledge, information, and belief, the whole of the Goods and Chattels, rights and credits, of which the said deceased died possessed

[or solemnly, sincerely, and truly affirm and declare.]

"I" or "We." "My" or "Our." If deceased died on or after 3rd April, 1860, insert this clause:—Including any personal Estate and Effects which the deceased has disposed of under Will aforesaid under any authority enabling to dispose of the same as should think fit.

are under the value of pounds, exclusive of what the deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased, except in respect of Leaseholds in Mortgage; and further that the particulars of the debt so deducted are as follows, that is to say,

Here state briefly the date and particulars of the Mortgage Security in respect of every debt deducted.

FORMS OF JURAT.

If one deponent only.

"*Sworn at on the &c.*"

If more than one Deponent

"*Sworn by the said and at on the &c.*"

and that the said Leaseholds are the sole security by way of Mortgage of the said debt

Sworn

on the day of 18 before me

[ADMINISTRATION BOND.]

KNOW All Men by these Presents, That We

are jointly and severally bound unto
the President of Her Majesty's High Court of Justice, in the Sum of Pounds, of good and lawful money of *Great Britain*, to be paid to the said
or to the Judge of the Probate Division of the said Court for the time being, for which payment well and truly to be made we bind ourselves, and of us for the Whole, our Heirs, Executors, and Administrators, firmly by these Presents. Sealed with our Seals. Dated the day of
in the Year of our Lord One Thousand Eight Hundred and

The Condition of this Obligation is such, that if

do, when lawfully called on in that behalf make, or cause to be made, a true and perfect Inventory of all and singular the Personal Estate and Effects of the said Deceased
which have or shall come to Hands, Possession, or Knowledge, and the same so made do exhibit, or cause to be exhibited into the Principal Registry of the Probate Division of Her Majesty's High Court of Justice, whenever required by law so to do. And the same personal Estate and Effects
do well and truly Administer (that is to say,) do pay the debts of the said Deceased which did owe at decease, and then the Legacies contained in the said Will annexed to the said Letters of Administration, so to committed, as far as Personal Estate and Effects will thereto extend, and the Law Charge

And further do make, or cause to be made, a just and true Account of said Administration, when shall be thereunto lawfully required, and all the rest and residue of the said Personal Estate and Effects
, shall deliver and pay unto such Person or Persons as shall be by law entitled thereto, then this Obligation to be void and of none Effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named

n the presence of

[AFFIDAVIT OF ATTESTING WITNESS.—No. 1; P. R.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of deceased.

I,

[or solemnly affirm.]

[or Codicil, as the case may be.]

of make Oath
that I am one of the subscribing Witnesse
to the last Will and Testament
of late of
deceased,
the said Will being now hereunto annexed,
bearing date
and that the said Testat executed the said Will
on the day of the date thereof by signing h name at the
foot or end thereof
as the same now appears thereon, in the presence of me, and
of the other
subscribed Witness thereto, both of us being present at the
same time, and we thereupon attested and subscribed the
said Will in the presence of
the said Testat

Sworn

on the day of
18 before me

[Affidavit of Attesting Witness in proof of due execution and reading over.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

the Goods of deceased.

o

Or solemnly affirm.

Last Will and Testament or Codicil (as the case may be).

make Oath and say, that I am one of the Subscribing Witnesses to the

of the said late of

Will or Codicil.

deceased; the said being now hereunto annexed, bearing date

and that the said Testat

* "signing his name," or "making his mark" as the case may be.

executed the said on the day of the date thereof by* at the foot or end thereof as the same now appears thereon, in the presence of me and of

the other subscribed Witness

thereto, both of us being present at the same time, and we thereupon attested and subscribed the said

in the presence of the said Testat

And I further make Oath and say that the said was read over to the Testat before its execution, when appeared fully to understand the same

Sworn at

on the day of 18 before me

[Affidavit of attesting Witness verifying Alterations in a Will or Codicil.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of deceased.

I,

of

make Oath and say that I am one of the subscribing Witnesses to the*

last Will and Testament

of

late of

deceased, the said* being now hereunto annexed, bearing date the day of 18 And I further make Oath and say that I have carefully perused and inspected the said* and have particularly observed

And I further make Oath and say that the said Testat executed the said* on the day of the date thereof, by signing h name† as the same now appears thereon, in the presence of me and of the other subscribed Witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said in the presence of the said Testat And I further make Oath and say that the said testat ‡

were written and made in the said* previously to the execution thereof.

* Or Codicil to the.

* Will or Codicil. The words " " interlinedbetween the and lines of the first side or page of the said Will, the name " " interlinedbetween the and lines of the said first side or page the words and figures " " struck through in ink in the line of the second side or page of the said Will, and the word " " written upon an erasure in the line of the said second side or page (or, as the case may be, taking care to describe accurately the various interlineations, alterations, obliterations, or erasures, in the order in which they appear in the document).

* Will or Codicil.

† " At the foot or end thereof,"

or

" In the testimonium clause thereof,"

or

" In the attestation clause thereto;"

[or as the case may be].

‡ Interlineations, alterations, obliterations or erasures, [as the case may be].

* Will or Codicil.

FORMS OF JURAT.

If one Deponent only.

" *Sworn at on the &c.*"

If more than one Deponent,

" *Sworn by the said and at on the &c.*"

Sworn

on the day of 18 ,

before me.

PERSONAL APPLICATIONS.

Rules, Orders, and Instructions as to Personal Applications for Grants of Probate or Letters of Administration.

1. Persons wishing to obtain Grants of Probate or Letters of Administration without the intervention of a Proctor, Solicitor, or Attorney, must apply in person at the Department for Personal Applications, and not by letter.

2. No such Application will be received through an agent of any kind (whether paid or unpaid).

3. The Applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All Fees are to be paid in advance in Probate Court Stamps.

5. Applications which have in the first instance been made through a Proctor, Solicitor, or Attorney at the Principal Registry, or at a District Registry, cannot be transferred to this Department.

6. Applications for Grants of Probate or Administration in cases which have already been before the Court (on motion or otherwise) will not be entertained at this Department, but must be made through a Proctor, Solicitor, or Attorney.

7. Whenever it becomes necessary, in the course of proceeding with an Application which has been entertained at this Department, to obtain the directions of the Court, the Application will not be proceeded with, but must be placed in the hands of a Proctor, Solicitor, or Attorney.

8. The papers necessary to lead the Grant applied for will be prepared in this Department. An Applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual Fee for perusal being charged). All further papers which may be required will be drawn in this Department. Testamentary Papers once deposited in this Department will not be given out unless under special circumstances, and by permission of one of the Registrars.

9. When it is necessary to administer an Oath or take an Affirmation, the party shall be sworn or affirmed before some proper authority of the Principal Registry, or of a District Registry, unless otherwise permitted by one of the Registrars.

10. Every Applicant for a first Grant of Probate or Letters of Administration must produce a Certificate of the death or burial of the Deceased, or give a reason, to the satisfaction of one of the Registrars, for the non-production thereof.

11. Every Applicant must be prepared with a reference to some person of position or character, to establish his or her identity.

12. The Engrossments of Wills and Testamentary Papers will be made in the Registry.

13. Every Applicant for a Grant of Probate or Letters of Administration shall give under his or her hand a Schedule of the Property to be affected by the Grant in the form hereunto annexed, marked A. (The necessary forms will be provided in the Registry.)

14. Legal Advice is not to be given to Applicants, either with respect to the property to be included in the abovementioned Schedule, or upon any other matter connected with the Application, and the Clerks in this Department are only to be held responsible for embodying in a proper form the instructions given to them; but they will, as far as practicable, assist Applicants by giving them information and directions as to the course which they must pursue.

15. A Receipt or Acknowledgment of each Application will be handed to the Applicant, and the production of such Receipt will be required of the person who attends to obtain the Grant when completed.

16. No Clerk or Officer of this Department is to become Surety to any Administration Bond.

17. All Administration Bonds in cases of Personal Applications are to be executed in this Department, or in a District Registry; if executed in this Department the Bond must be attested by the Chief Clerk or Senior Clerk in attendance.

(A.)—An Account of the Personal Estate and Effects of _____ Deceased.

(No Deductions to be made on account of Debts owing by Deceased.)

———	Price of Stocks.	Actual Value.		
		£	s.	d.
Cash in the House and at the Bankers ..				
Household Goods, Linen, Wearing Apparel, Books, Plate, Jewels, Carriages, Horses, &c., valued at				
Stocks or Funds of Great Britain transferable at the Bank or elsewhere in England, viz.:—				
Dividends thereon..				
Foreign Stocks or Funds transferable in England, viz.:—				
Dividends thereon..				
Leasehold Property:—				
Value, per annum				
Ground Rent on do., per annum ..				
Length of Unexpired Term				
Rents of Real or Leasehold Property due at the death of the Deceased				
Do. of Leasehold Property due since the Death of the Deceased				
Proprietary Shares or Debentures of Public Companies, viz.:—				
Dividends or interest thereon ..				
Money out on Mortgage and other securities				
Interest thereon				
Book Debts				
Bonds and Bills				
Notes				
Interest thereon				
Real Estate *contracted* to be sold				
Personal Estate and Effects left by the Will under some authority enabling the Deceased to dispose of the same as he or she might think fit				
Stock-in-Trade, Farming Stock, and Implements of Husbandry valued at				
Other Personal Property not comprised under the foregoing heads, viz.:— ..				

A FEW HINTS TO EXECUTORS AS TO THE DISTRIBUTION OF THE PROPERTY.

CHAPTER III.

As full instructions will be found in my "Practical Guide" for the payment of the Legacy and Succession Duties required by the Inland Revenue under the 36 Geo. III., cap. 52, 45 Geo. III., cap. 28, and the 16 and 17 Vict., cap. 51, such information in these pages would only serve to extend the size of this work unnecessarily. There are a few points, however, in connection with the distribution of the property and other duties of executors which it would be as well to mention here, and which it is hoped will be found useful by the reader.

The executor is the legal personal representative of the deceased, and all moveable goods vest in him.

Should a married woman be appointed an executrix, the consent of her husband is necessary before she can act, and even then he must join her in all the acts done in connection with the executorship.

Where two or more executors are appointed they will be considered as one, and the acts done by one will be held to be done by all, although each may act separately, and receive and give a discharge for a debt, or pay a legacy; but an executor can neither sue nor be sued by his co-executors. Should it be necessary, however, to bring an action in connection with the estate, all the executors must join in doing so.

Should the executor, in examining the papers of the

deceased previous to obtaining probate, find that the testator has given some property in his lifetime by some document which has no legal force, he will be compelled to take possession thereof as part of the estate, and will not be considered to hold it in trust for the person to whom the testator had intended to give it, although that person may have been in possession of it in the testator's lifetime; for if it were not legally conveyed to him, it would not be his, as under the decision of Richards *v.* Delbridge (18 Eq., L. R., 11) it was held that an invalid transfer could not operate as a declaration of trust.

As some time must necessarily elapse between the date of the death and the date of the probate of the will, an executor would naturally be uncertain what particular acts he might legally perform before the probate was granted to him, and by which he is constituted the legal personal representative of the deceased, especially as, by the 55 Geo. III., cap. 184, sec. 37, a penalty of £100 attaches to any person administering an estate without having taken out a grant of probate to the will, or letters of administration to the estate of the deceased, and paid the proper stamp duty on the value of the effects within six months after the date of the death; the following are some of those acts which not only he might do, but which it would be advisable for him to perform, before the grant can be obtained.

As the law compels an executor to pay the debts of a testator before any portion of the estate can be legally handed over to the legatees, the sooner he obtains a list containing the names of all the creditors the better, with the amount of their claims; and in order to assist him in obtaining these, as well as to release him from any subsequent liability should any creditor fail to present his claim until after the estate had been divided, he should insert in the "London Gazette" and two daily newspapers an advertisement in the following form:—

GEORGE HALL, deceased.—Pursuant to Statute 22nd and 23rd Victoria, Cap. 35, Notice is hereby given that all persons having any CLAIM against the ESTATE of GEORGE HALL, late of 34, Eaton Place, Belgrave Square, London, in the County of Middlesex, Gentleman, who died on the 5th October, 1875, and whose Will was proved on the 8th November, 1875, in the Principal Registry of the Probate Division of the High Court of Justice by Job Thornton, the Executor named in the said Will, are requested to send in writing the particulars of their claims to the undersigned, on or before the 25th June, 1876, after which date the said Executor will distribute the assets of the said deceased, having regard only to the claims of which he shall have had notice.—Dated this 20th day of May, 1876.

H. & J. BAKER, of 49, Queen Street, London, E.C., Solicitors to the Executor.

Should the executor find, after having obtained a list of all the debts, that the assets are not sufficient to pay them in full, he will not only have to resort to the real estate which, under the 3 and 4 Wm. IV., cap. 104, is now made assets to be applied equally with the personal estate in payment of debts; but should that also prove insufficient, he will have, as it is called, to marshal his assets, and pay the debts in the following order:—

GROUP 1. Debts due to the Crown by record or speciality.

GROUP 2. Debts due to the parish as overseer of the poor.

Money due to any friendly society in which the deceased held any office.

Money due from the deceased as treasurer or collector to the Paving Commissioners.

GROUP 3. Judgments or decrees of the Court of Chancery obtained against the deceased.

GROUP 4. Recognizances.

GROUP 5. Debts due on mortgage bonds and covenants, and other instruments under seal.

Rents.

Simple contract debts.

Formerly the debts mentioned in No. 5 were paid as separate groups in the order in which they stand, but by 32 and 33 Vict., cap. 46, this distinction has been abolished, and they all now rank as of equal value.

Since the passing of the Acts 17 and 18 Vic., cap. 113, and the Amendment Act thereto, 30 and 31 Vic., cap. 69, mortgage debts are declared to be payable primarily out of the estate upon which they are secured, and where any real estate burthened with a mortgage debt is specifically devised to any one the devisee will take the estate subject to the debt, and the executor can only be compelled to resort to the personal estate for its payment, should the said real property be insufficient in value. By the second of these Acts, any unpaid purchase-money of real estate bought by the testator is to be considered as a charge on the estate, and is not to be primarily payable out of the personal estate by the executor.

The provisions of these Acts are held to apply where the money has been lent on a mere deposit of the title-deeds, and even when accompanied by a promissory note for the amount, as will be seen on reference to the decisions in the cases Coleby *v.* Coleby (2 Eq., 1866, 803) and Pembroke *v.* Friend (1 J. and H. 132).

Should, however, the real estate and the residue of the personal estate be given, or devolve by law, to one and the same person, it is competent for him to resort to either property for the payment of the mortgage.

As the Acts relating to the payment of mortgage debts are but short, I annex them here in full:—

17 & 18 Vic., cap. 113.

"*An Act to amend the Law relating to the Administration of the Estates of deceased Persons*—11*th August*, 1854.

"Whereas it is expedient that the Law whereunder the Real and Personal Assets of deceased Persons are administered should be amended: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

"I. When any Person shall, after the Thirty-first day of *December* One thousand eight hundred and fifty-four, die seised of or entitled to any Estate or Interest in any Land or other Hereditaments which shall at the Time of his Death be charged with the payment of any Sum or Sums of Money by way of Mortgage, and such Person shall not, by his Will or Deed or other Document, have signified any contrary or other Intention, the Heir or Devisee to whom such Land or Hereditaments shall descend or be devised shall not be entitled to have the Mortgage Debt discharged or satisfied out of the Personal Estate or any other Real Estate of such Person, but the Land or Hereditaments so charged shall, as between the different Persons claiming through or under the deceased Person, be primarily liable to the Payment of all Mortgage Debts with which the same shall be charged, every Part thereof, according to its Value, bearing a proportionate Part of the Mortgage Debts charged on the whole thereof: Provided always, that nothing herein contained shall affect or diminish any Right of the Mortgagee on such Lands or Hereditaments to obtain full Payment or Satisfaction of his Mortgage Debt either out of the Personal Estate of the Person so dying as aforesaid or otherwise: Provided also, that nothing herein contained shall affect the Rights of any Person claiming under or by virtue of any Will, Deed, or Document already made or to be made before the First Day of *January*, One thousand eight hundred and fifty-five.

17 & 18 cap. 113. Section 1. Heir or Devisee of Real Estate not to claim Payment of Mortgage out of Personal Assets.

Not to affect Rights claimed under any Will, &c. before 1st Jan., 1855.

"II. This Act shall not extend to *Scotland*.

Section 2. Extent of Act.

"*An Act to explain the Operation of an Act passed in the Seventeenth and Eighteenth Years of Her present Majesty, Chapter One hundred and thirteen, intituled An Act to amend the Law relating to the Administration of deceased Persons—25th July*, 1867.

30 & 31 Vic., cap. 69.

"Whereas by an Act passed in the Seventeenth and Eighteenth Year of Her present Majesty it is enacted, among other things, when any Person shall, after the Thirty-first day of *December* One thousand eight hundred and fifty-four, die seised of or entitled to any Estate or Interest in any Land or other Hereditaments which shall at the Time of his Death be charged with the Payment of any Sum or Sums of Money by

way of Mortgage, and such Person shall not, by his Will or Deed or other Document, have signified any contrary or other Intention, the Heir or Devisee to whom such Land or Hereditaments shall descend or be devised shall not be entitled to have the Mortgage Debt discharged or satisfied out of the Personal Estate or any other Real Estate of such Person, but the Land or Hereditaments so charged shall, as between the different Persons claiming through or under the deceased Person, be primarily liable to the Payment of all Mortgage Debts with which the same shall be charged, every Part thereof, according to its Value, bearing a proportionate Part of the Mortgage Debts charged on the whole thereof:

"And whereas Doubts may exist upon the Construction of the said Act, and it is expedient that such Doubts should for the future be removed:

"Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

30 & 31 Vic., c. 69. Section 1. In construing Wills, general direction for Payment of Debts out of Personalty not to include Mortgage Debts, unless such Intention expressly implied.

"1. In the Construction of the Will of any Person who may die after the Thirty-first Day of *December* One thousand eight hundred and sixty-seven, a general Direction that the Debts or that all the Debts of the Testator shall be paid out of his Personal Estate shall not be deemed to be a Declaration of an Intention contrary to or other than the Rule established by the said Act, unless such contrary or other Intention shall be further declared by Words expressly or by necessary Implication referring to all or some of the Testator's Debts or Debt charged by way of Mortgage on any Part of his Real Estate.

Section 2. Interpretation of Word "Mortgage."

"2. In the Construction of the said Act and of this Act, the Word "Mortgage" shall be deemed to extend to any Lien for unpaid Purchase Money upon any Lands or Hereditaments purchased by a Testator.

Section 3. Extent of Act.

"3. This Act shall not extend to *Scotland*."

Where the mortgage has been advanced upon the security of freehold and leasehold property, together with a policy of insurance, the debt will have to be apportioned among the

three securities according to their respective values, as was decreed by the Court in the case of Lipscombe *v.* Lipscombe (L. R., 7 Eq., 501.)

Debts which are barred by the Statute of Limitations may be paid by the executor, as well as those within the proscribed period—see Williamson *v.* Naylor (3 Yo. and Coll. 208), but the executor must not pay a greater amount of interest upon such debts than the creditor can claim under the provisions of the 3 and 4 Wm. IV., cap. 27.

Prior to the passing of the 3 and 4 Wm. IV., cap. 104, simple contract creditors could only resort to the personal assets of a testator for the payment of their debts; but by the provisions of that Act the real estate becomes assets in the hands of the executor or administrator for the payment of all debts of what kind soever should the personal estate be insufficient for the purpose. An executor being also a creditor has the privilege of paying himself his own debt in priority to any other creditor of the same rank, even should that debt be barred by the Statute of Limitations.

Should the testator have left a legacy to a creditor of the same or larger amount than his debt, this is considered and will have to be taken in satisfaction of his debt; and the executor will not be allowed to pay the creditor both his legacy and his debt, unless so declared by the will, or the debt has been contracted after the date of the will, or should be due on a bill of exchange or on a current account between them, or the legacy given should be for life only, or of undetermined amount, or reversionary, or even given for a particular purpose.

Should the deceased have been in business, an executor may carry it on until such time as he can conveniently sell it, unless there is an express direction to the contrary contained in the will, he may buy goods, complete contracts entered into by the deceased, and even commence an action at law, and all these acts would be considered valid, even should he die before the probate was obtained. After having

satisfied the creditors, the executor's next care will be the distribution of the estate among the legatees; and, simple as this may seem to the uninitiated, there are points in connection with the payment of legacies to which it is necessary an executor should pay attention in order to avoid litigation and cost to himself.

In realising the estate an executor is bound to use ordinary diligence; and if, by reason of any unnecessary delay, the estate suffers loss, the Court of Chancery, if appealed to, will compel him to make good the loss occasioned by his neglect.

This was decided by the Court in the case of Wightwick *v.* Lord (6 H. L. Cases, 217), in which the estate, by reason of the executor not selling some Crystal Palace shares within a reasonable time, sustained a loss in consequence of the fall in the price; and the Court charged the executor with the difference between the amount the shares actually realized and the sum they would have realized had they been sold twelve months before. Where the deceased happens to have invested property in the joint names of himself and wife, or of himself and a child, the survivor will take, by operation of law, and the executor need not include such property in the grant, for the presumption is that the deceased intended the investment as a benefit for the wife or child should they survive; but where the investment happens to have been made in the joint names of the testator and some person other than a wife and child, the burthen will lie upon the survivor to show that there was no resulting trust, in order to prove that the money invested survives to him. See the decisions in the cases of Garrick *v.* Taylor (7 Jur. N.S., 1174), and Marshall *v.* Cruttwell (L. J. R., vol. 44, Chy. 504).

Should it be found necessary to retain any portion of the estate after it has been realized, the executor should invest it in such funds as the Court of Chancery will recognise, and should any loss arise from the reason of the executor having invested the assets in any other kind of security than that allowed by law, the Court will compel him to make good

the loss. Formerly the only security in which a trustee could invest his trust funds was the £3 per Cent. Consolidated Bank Annuities; but greater powers have lately been accorded to trustees, and among them that of investing their trust funds, not only in the public funds generally, but also in certain of the Indian securities. The limit to which these powers extend will be found in the Trustee Relief Acts, 22 and 23 Vict., cap. 35, section 32; 23 and 24 Vict., cap. 145, part iii., sec. 25; and the Amendment Act 30 and 31 Vict., cap. 132, copies of which are here annexed:

22 & 23 Vic., Cap. 35, Sec. 32.

"XXXII. When a Trustee, Executor, or Administrator shall not, by some Instruments creating a Trust, be expressly forbidden to Invest any Trust Fund or Real Securities in any part of the United Kingdom, or on the Stock of the Bank of *England* or *Ireland*, or on *East India* Stock, it shall be lawful for such Trustee, Executor, or Administrator to Invest such Trust Fund on such Securities or Stock; and he shall not be liable on that account as for a Breach of Trust provided that such Investment shall in other respects be reasonable and proper."

23 & 24 Vic., Cap. 145, Part III. On what Securities Trust Funds may be invested.

"XXV. Trustees having Trust Money in their Hands which it is their Duty to invest at Interest shall be at liberty, at their Discretion, to invest the same in any of the Parliamentary Stocks or Public Funds, or in Government Securities; and such Trustees shall also be at liberty, at their Discretion, to call in any Trust Funds invested in any other Securities than as aforesaid, and to invest the same on any such Securities as aforesaid, and also from Time to Time, at their Discretion, to vary any such Investments as aforesaid for others of the same Nature: Provided always, that no such original Investment as aforesaid (except in the Three *per Cent.* Consolidated Bank Annuities), and no such Change of Investment as aforesaid, shall be made where there is a Person under no Disability entitled in possession to receive the Income of the Trust Fund for his Life, or for a Term of Years determinable with his Life, or for any greater Estate, without the Consent in Writing of such Person."

30 & 31 Vic., c. 132.

"*An Act to remove Doubts as to the Power of Trustees, Executors, and Administrators to invest Trust Funds in certain Securities, and to declare and amend the Law relating to such Investments.*—(*20th August*, 1867.)

"Whereas by an Act passed in the Session holden in the Twenty-second and Twenty-third Years of Her present Majesty, Chapter Thirty-five, 'to further amend the Law 'of Property, and to relieve Trustees,' it is enacted, that 'when a Trustee, Executor, or Administrator shall not, by 'some Instruments creating his Trust, be expressly for-'bidden to invest any Trust Fund on Real Securities in 'any Part of the United Kingdom, or on the Stock of the 'Bank of *England* or *Ireland*, or on *East India* Stock, it 'shall be lawful for such Trustee, Executor, or Administrator 'to invest such Trust Fund on such Securities or Stock, and 'he shall not be liable on that account as for a Breach of 'Trust, provided that such Investment shall in other respects 'be reasonable and proper:'

"And whereas Doubts have arisen as to the legal Effect and Signification of the Words '*East India* Stock' in the said Act mentioned:

"Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Section 1. Application of Term "East India Stock" in recited Act.

"1. The Words '*East India* Stock' in the said Act passed in the Session holden in the Twenty-second and Twenty-third Years of Her Majesty, Chapter Thirty-five, shall include and express as well the *East India* Stock which existed previously to the Thirteenth Day of *August* One thousand eight hundred and fifty-nine, when the said Act received the Assent of Her Majesty, as *East India* Stock charged on the Revenues of *India*, and created under and by virtue of any Act or Acts of Parliament which received Her Majesty's Assent on or after the Thirteenth day of *August* One thousand eight hundred and fifty-nine; and it shall be lawful for every Trustee, Executor, or Administrator to invest any Trust Fund in his Possession or under

his Control in the Stock created by the last-mentioned Act or Acts to the same Extent, and for the same Purposes and Objects, as he can now invest such Trust Fund in the *East India* Stock which existed previously to the Thirteenth Day of *August* One thousand eight hundred and fifty-nine.

30 & 31 Vic. c. 132.

"2. It shall be lawful for every Trustee, Executor, or Administrator to invest any Trust Fund in his Possession or under his Control in any Securities the Interest of which is or shall be guaranteed by Parliament to the same Extent and in the same Manner as he may invest such Trust Fund in such Securities as aforesaid."

Section 2. Trustees may invest in any Securities, Interest whereon is guaranteed by Parliament.

Although it has been previously stated that the law does not allow charitable legacies to be paid out of real estate, or even out of personalty savouring of realty, such as mortgages, &c., it may be as well to point out more particularly the description of such personal estate to which this prohibition extends, and to give a list of testamentary gifts considered as coming under the head of "charitable legacies." Amongst the personal property so restricted may be included leaseholds for lives and years, proceeds of the sale of land or houses, rents or interest arising out of land, mortgages, money secured in parochial or county rates and turnpike tolls; and the following legacies are considered to be of the nature of "charitable legacies." Free schools, scholars in universities, relief of prisoners, repair of bridges, churches, highways, hospitals, in aid of young tradesmen, marriages of poor maids, money left for public purposes, advancement of christianity, promotion of the protestant religion, and the establishment of a preacher in any particular church or chapel. Formerly a legacy to Queen Anne's bounty was comprised in the same category, but this is now exempt from the operation of the Mortmain Act, by reason of a special Act of Parliament. The Universities of Oxford and Cambridge, and the Colleges of Eton, Westminster and Winchester, are similarly exempted. A legacy payable to a minor cannot be paid over until the legatee attains 21 years of age, for he is not competent to give the executor a

legal discharge for his legacy; under these circumstances, therefore, the proper course for the executor to pursue is to invest the legacy in the funds, and subject to any provision for the maintenance and education of the legatee, it must be allowed to accumulate during his minority, and on the legatee attaining 21 years of age, the executor will hand over to him the capital with all the accumulations; but should the executor be unwilling to burthen himself with this trust, and wish to be released from any further trouble, the rest of the estate having been distributed, he can, if he choose, pay the legacy into the Bank of England under the provisions of the 36 Geo. 3, Cap. 52, Sec. 32; and 37 Geo. 3, Cap. 135, with the privity of the Accountant-General of the Court of Chancery, but, before doing so, he must pay the legacy duty properly payable thereon, at the Legacy Duty Office, Somerset House, where, at the same time, he can obtain a certificate in the following form to enable him to pay the legacy into the Bank of England, having first given notice to the Accountant-General of the Court of Chancery at the office in Chancery-lane, of his intention.

The Executors of the last Will of
late of
deceased, proved on the day of n he
Year of our Lord One Thousand Eight Hundred and
propose to pay the Sum of
into the Bank of England, with the privity of the Accountant General of
the Court of Chancery, to be placed to the Account of
a Legatee under the Will, who is

Certificate of Payment of Legacy Duty, under 36 Geo. 3, c 52, s. 32, and 37 Geo. 3, c. 135.

Reg.	No.	18	Fo.

I certify that the Sum of
was paid on the day of 18
for Legacy Duty at the rate of per Cent. in respect
of the above Gift of
payable to
described as
of the deceased.——

Examined,

Controller of Legacy Duty,.
By order of the Commissioners of Inland Revenue.

Before the passing of the 23 and 24 Vic., Cap. 145, an executor had no power to apply any portion of the dividends or interest of the investment of a legacy bequeathed to a minor unless there was an express direction in the will to enable him to do so, and great hardships arose in consequence of executors not liking to act upon their own responsibility, and do that which the law gave them no power to do; but the 26th Section of this Act enables executors, *at their sole discretion*, not only to pay part of the income arising from the investment of the legacy for the maintenance and education of the legatee, but also to apply the whole of the accumulations of such investment for the legatee's benefit. The Section is as follows:—

23 & 24 Vic. Cap. 145, Sec. 26. Trustees may apply Income of Property of Infants, &c. for their Maintenance.

"XXVI. In all Cases where any Property is held by Trustees in trust for an Infant, either absolutely, or contingently on his attaining the Age of Twenty-one Years, or on the Occurrence of any Event previously to his attaining that Age, it shall be lawful for such Trustees, *at their sole Discretion*, to pay to the Guardians (if any) of such Infant, or otherwise to apply for or towards the Maintenance or Education of such Infant, the whole or any Part of the Income to which such Infant may be entitled in respect of such Property, whether there be any other Fund applicable to the same Purpose, or any other Person bound by Law to provide for such Maintenance or Education, or not; and such Trustees shall accumulate all the Residue of such Income by way of Compound Interest, by investing the same and the resulting Income thereof from Time to Time in proper Securities, for the Benefit of the Person who shall ultimately become entitled to the Property from which such Accumulations shall have arisen: Provided always, that it shall be lawful for such Trustees at any Time, if it shall appear to them expedient, to apply the whole or any Part of such Accumulations as if the same were part of the Income arising in the then current Year."

Should the deceased by his will have released a person from the payment of his debt, this release will not operate unless there are sufficient assets to pay both his creditors

and the legatees in full; should this not be the case, the debtor so released will either have to pay his debt to the executor, to be distributed as part of the assets, or the balance thereof, after deducting such part only as would be his proportion, the release of debt being regarded precisely as a legacy, and accordingly, as having by insufficiency of property to abate with the rest. The executor must, however, call upon the debtor to satisfy the legacy duty payable on this gift to him, and should he refuse, it is competent for the executor to sue him for the amount. Where a legacy is given at once, and the legatee survives the testator, there can be no question as to the vesting of the bequest; but very nice points have arisen where the payment of it is postponed, and the legatee died before it became payable, as to the intention of the testator to bestow on the legatee an interest which should render the legacy in that event payable to his personal representative, or to make the gift of it to him dependent on his surviving the time specified; for instance, a legacy given to A B on his attaining 21, will be considered to vest in him, and the time mentioned is only important as regulating the date of its payment to him or to his legal personal representative, should he die under that age; but a legacy to A B "if and when" he shall attain 21 would lapse into the residue, should he die before attaining that age; but if the executor have any doubt upon questions of this sort he had far better consult his solicitor than run the risk of legal proceedings by acting on his own judgment.

It has been stated, in a previous chapter, that the law allows 12 months to an executor to realize the estate, so that interest will not become payable upon general legacies until after the expiration of that time, but *specific* legacies of stocks, shares, or investments of any kind, already bearing interest as well as leasehold houses or lands and legacies payable out of real estate, although not handed over, transferred or conveyed until after the 12 months will still carry with them all the dividends, interest or rents accrued due

between the death of the testator and the date of the transfer and conveyance to the legatee. Where any property which depreciates in value from year to year; such as leaseholds, is given to a legatee for life, and there is no evidence that the testator intended to give him the actual rent of it for that period, the executor must either sell it and invest the proceeds or have it valued by a competent appraiser, and pay over to the life tenant the dividends which would arise from the investment, or so much of the rents as would be equal to the income arising from the value, supposing such an amount had been invested, and accumulate the surplus rents for the remainder man. For example, suppose the net rental of a leasehold house to be £70 per annum, and the saleable value of it to be £1,000, this invested in 3 per cent. Consolidated Bank Annuities at 93, would produce £1,075. 5s. 4d., and the dividends thereon would be £32. 5s. 1d. per annum, the life tenant would be entitled to receive this amount only during his life, and at his death the remainder man would have to take the leasehold house at its *then* value, together with the accumulated amount of the surplus rents by way of compensation for the depreciated value of the property by reason of the number of years which will have expired since the death of the testator.

Should the testator have entered into some engagement which cannot be fulfilled for some years, by reason of which the executor is uncertain whether or not claims may be brought against the estate, he will be unwise to distribute the entire residue among the residuary legatees until the liability in question is at an end, lest having parted with the estate of his testator he may be called upon to make good these claims upon it out of his own pocket. His proper course in such a case is to invest so much of the capital of the residue as may be sufficient to meet the possible demand until the estate is released from the liability, when he can with safety to himself divide the capital. Before the passing of the 1 Wm. 4, cap. 40, it was considered, should there be no residuary

legatee named in the will, that the executor was entitled to the residue for his own benefit, but the provisions of that Act declared that an executor should be considered in the light of a trustee only, to carry out the intentions of the testator, or to distribute his property in accordance with the law, and should the testator have failed to nominate a residuary legatee, not a very unusual case, his duty will be to divide the residue among the testator's next of kin, according to the Statute of Distributions.

Should an executor desire at any time to be released from the trusts of the will, in consequence of advancing age, ill health, the necessity of going abroad, &c., and can find some friend willing to undertake the trouble, to continue the trusts of the will, the 23 and 24 Vic., cap. 145, enables him to do so whether the testator insert a clause in his will giving him the power to appoint a new trustee or not, and when so appointed, the executor will have to transfer the investments then existing from one name to the other.

The following are the sections of the Act which apply to the appointment of new trustees :—

23 & 24 Vic. Cap. 145, Sec. 27. Provisions for Appointment of new Trustees on Death, &c.

"XXVII. Whenever any Trustee, either original or substituted, and whether appointed by the Court of Chancery or otherwise, shall die, or desire to be discharged from or refuse or become unfit or incapable to act in the Trusts or Powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the Person or Persons nominated for that Purpose by the Deed, Will, or other Instrument creating the Trust (if any), or if there be no such Person, or no such Persons able and willing to act, then for the surviving or continuing Trustees or Trustee for the Time being, or the acting Executors or Executor or Administrators or Administrator of the last surviving and continuing Trustee, or for the last retiring Trustee, by Writing, to appoint any other Person or Persons to be a Trustee or Trustees, in the Place of the Trustee or Trustees so dying, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid; and so often as any new Trustee or Trustees shall be so appointed as aforesaid all the Trust Property (if any) which for the Time being shall be

vested in the surviving or continuing Trustees or Trustee, or in the Heirs, Executors, or Administrators of any Trustee, shall with all convenient Speed be conveyed, assigned, and transferred so that the same may be legally and effectually vested in such new Trustee or Trustees, either solely, or jointly with the surviving or continuing Trustees or Trustee, as the Case may require; and every New Trustee or Trustees to be appointed as aforesaid, as well before as after such Conveyance or Assignment as aforesaid, and also every Trustee appointed by the Court of Chancery either before or after the passing of this Act, shall have the same Powers, Authorities, and Discretions, and shall in all respects act, as if he had been originally nominated a Trustee by the Deed, Will, or other Instrument creating the Trust." 23 & 24 Vic. Cap. 145.

"XXVIII. The power of appointing new Trustees hereinbefore contained, may be exercised in cases where a Trustee nominated in a Will, has died in the lifetime of the Testator." Section 28.

As an executor might entertain some doubt as to the extent of his powers over the property of the deceased, with regard to selling real estate or raising money thereon where those powers are not fully set out in the will, a full copy of the 22 and 23 Vic., cap. 35, which is "An Act to further amend the Law of Property, and to Relieve Trustees," is inserted here, in order that he may clearly ascertain the full extent of the powers given him by the law:—

"*An Act to further amend the Law of Property and to relieve Trustees.*—13*th August*, 1859.

"Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same as follows:— 22 & 23 Vic. Cap. 35.

Leases.

"I. Where any Licence to do any Act which without such Licence would create a Forfeiture, or give a Right to re-enter, Section 1 Restriction on

Effect of Licence to alien.

under a Condition or Power reserved in any Lease heretofore granted or to be hereafter granted, shall at any Time after the passing of this Act be given to any Lessee or his Assigns, every such Licence shall, unless otherwise expressed, extend only to the Permission actually given, or to any specific Breach of any Proviso or Covenant made or to be made, or to the actual Assignment, Under-lease, or other Matter thereby specifically authorized to be done, but not so as to prevent any Proceeding for any subsequent Breach (unless otherwise specified in such Licence); and all Rights under Covenants and Powers of Forfeiture and Re-entry in the Lease contained shall remain in full force and virtue, and shall be available as against any subsequent Breach of Covenant or Condition, Assignment, Under-lease, or other Matter not specially authorized or made dispunishable by such Licence, in the same Manner as if no such Licence had been given; and the Condition or Right of Re-entry shall be and remain in all respects as if such Licence had not been given, except in respect of the particular Matter authorized to be done."

Section 2. Restricted Operation of partial Licences.

"II. Where in any Lease heretofore granted or to be hereafter granted there is or shall be a Power or Condition of Re-entry on assigning or underletting or doing any other specified Act without Licence, and a Licence at any Time after the passing of this Act shall be given to One of several Lessees or Co-owners to assign or underlet his Share or Interest, or to do any other Act prohibited to be done without Licence, or shall be given to any Lessee or Owner, or any One of several Lessees or Owners, to assign or underlet Part only of the Property, or to do any other such Act as aforesaid in respect of Part only of such Property, such Licence shall not operate to destroy or extinguish the Right of Re-entry in case of any Breach of the Covenant or Condition by the Co-Lessee or Co-Lessees, or Owner or Owners of the other Shares or Interests in the Property, or by the Lessee or Owner of the rest of the Property (as the Case may be) over or in respect of such Shares or Interests or remaining Property, but such Right of Re-entry shall remain in full Force over or in respect of the Shares or Interest or Property not the subject of such Licence.

Section 3.

"III. Where the Reversion upon a Lease is severed, and the Rent or other Reservation is legally apportioned, the

Assignee of each Part of the Reversion shall in respect of the apportioned Rent or other Reservation allotted or belonging to him, have and be entitled to the Benefit of all Conditions or Powers of Re-entry for Nonpayment of the original Rent or other Reservation, in like Manner as if such Conditions or Powers had been reserved to him as incident to his Part of the Reversion in respect of the apportioned Rent or other Reservation allotted or belonging to him."

22 & 23 Vic. Cap. 35. Apportionment of Conditions of Re-entry in certain Cases.

Policies of Insurance.

"IV. A Court of Equity shall have Power to Relieve against a Forfeiture for Breach of a Covenant or Condition to insure against Loss or Damage by Fire, where no Loss or Damage by Fire has happened, and the Breach has, in the Opinion of the Court, been committed through Accident or Mistake, or otherwise without Fraud or gross Negligence, and there is an Insurance on foot at the Time of the Application to the Court in conformity with the Covenant to insure, upon such Terms as to the Court may seem fit."

Section 4. Relief against Forfeiture for Breach of Covenant to insure in certain Cases.

"V. The Court, where Relief shall be granted, shall direct a Record of such Relief having been granted to be made by Endorsement on the Lease or otherwise."

Section 5. When Relief granted the same to be recorded.

"VI. The Court shall not have Power under this Act to relieve the same Person more than once in respect of the same Covenant or Condition; nor shall it have Power to grant any Relief under this Act where a Forfeiture under the Covenant in respect of which Relief is sought shall have been already waived out of Court in favour of the Person seeking the Relief."

Section 6. Court not to relieve any Person more than once in respect of the same Covenant, &c.

"VII. The Person entitled to the Benefit of a Covenant on the Part of a Lessee or Mortgagor to insure against Loss or Damage by Fire shall, on Loss or Damage by Fire happening, have the same Advantage from any then subsisting Insurance relating to the Building covenanted to be insured, effected by the Lessee or Mortgagor in respect of his Interest under the Lease or in the Property, or by any Person claiming under him, but not effected in conformity with the Cove-

Section 7. Lessor to have Benefit of an informal Insurance.

nant as he would have from an Insurance effected in conformity with the Covenant."

Section 8. Protection of Purchaser against Forfeiture under Covenant for Insurance against Fire in certain Cases.

"VIII. Where, on the *bona fide* Purchase after the passing of this Act of a Leasehold Interest under a Lease containing a Covenant on the Part of the Lessee to insure against Loss or Damage by Fire, the Purchaser is furnished with the written Receipt of the Person entitled to receive the Rent, or his Agent, for the last Payment of Rent accrued due before the Completion of the Purchase, and there is subsisting at the Time of the Completion of the Purchase an Insurance in conformity with the Covenant, the Purchaser or any Person claiming under him shall not be subject to any Liability, by way of Forfeiture or Damages or otherwise, in respect of any Breach of the Covenant committed at any Time before the Completion of the Purchase, of which the Purchaser had not Notice before the Completion of the Purchase; but this Provision is not to take away any Remedy which the Lessor or his legal Representatives may have against the Lessee or his legal Representatives for Breach of Covenant."

Section 9. Preceding Provisions to apply to Leases for a Term of Years absolute, &c.

"IX. The preceding Provisions shall be applicable to Leases for a Term of Years absolute, or determinable on a Life or Lives or otherwise, and also to a Lease for the Life of the Lessee or the Life or Lives of any other Person or Persons."

Rent-charges.

Section 10. Release of Part of Land charged not to be an Extinguishment.

"X. The Release from a Rent-charge of Part of the Hereditaments charged therewith shall not extinguish the whole Rent-charge, but shall operate only to bar the Right to recover any Part of the Rent-charge out of the Hereditaments released, without Prejudice nevertheless to the Rights of all Persons interested in the Hereditaments remaining unreleased, and not concurring in or confirming the Release."

Judgments.

Section 11. Release of

"XI. The Release from a Judgment of Part of any Hereditaments charged therewith shall not affect the Validity of

the Judgment as to the Hereditaments remaining unreleased, or as to any other Property not specifically released, without Prejudice nevertheless to the Rights of all Persons interested in the Hereditaments or Property remaining unreleased, and not concurring in or confirming the Release." 22 & 23 Vic. Cap. 35. Part of Land charged not to affect Judgment.

Powers.

"XII. A Deed hereafter executed in the Presence of and attested by Two or more Witnesses in the Manner in which Deeds are ordinarily executed and attested shall, so far as respects the Execution and Attestation thereof, be a valid Execution of a Power of Appointment by Deed or by any Instrument in Writing not testamentary, notwithstanding it shall have been expressly required that a Deed or Instrument in Writing made in exercise of such Power should be executed or attested with some additional or other Form of Execution or Attestation or Solemnity: Provided always, that this Provision shall not operate to defeat any Direction in the Instrument creating the Power that the Consent of any particular Person shall be necessary to a valid Execution, or that any Act shall be performed in order to give Validity to any Appointment, having no Relation to the Mode of executing and attesting the Instrument, and nothing herein contained shall prevent the Donee of a Power from executing it conformably to the Power by Writing or otherwise than by an Instrument executed and attested as an ordinary Deed, and to any such Execution of a Power this Provision shall not extend." Section 12. Mode of Execution of Powers.

"XIII. Where under a Power of Sale a *bona fide* Sale shall be made of an Estate with the Timber thereon, or any other Articles attached thereto, and the Tenant for Life or any other Party to the Transaction shall by Mistake be allowed to receive for his own Benefit a portion of the Purchase Money as the Value of the Timber or other Articles, it shall be lawful for the Court of Chancery, upon any Bill or Claim or Application in a summary Way, as the Case may require or permit, to declare that upon Payment by the Purchaser, or the Claimant under him, of the full Value of the Timber and Articles at the Time of Sale, with such Interest Section 13. Sale under Power not to be avoided by reason of mistaken Payment to Tenant for Life.

thereon as the Court shall direct, and the Settlement of the said Principal Moneys and Interest under the Direction of the Court upon such Parties as in the Opinion of the Court shall be entitled thereto, the said Sale ought to be established; and upon such Payment and Settlement being made accordingly the Court may declare that the said Sale is valid, and thereupon the legal Estate shall vest and go in like Manner as if the Power had been duly executed, and the Costs of the said Application as between Solicitor and Client shall be paid by the Purchaser or the Claimant under him."

Section 14. Devisee in Trust may raise Money by Sale, notwithstanding Want of express power in the Will.

"XIV. Where by any Will which shall come into operation after the passing of this Act the Testator shall have charged his Real Estate or any specific Portion thereof with the Payments of his Debts, or with the payment of any Legacy or other specific Sum of Money, and shall have devised the Estate so charged to any Trustee or Trustees for the whole of his Estate or Interest therein, and shall not have made any express Provision for the raising of such Debt, Legacy. or Sum of Money out of such Estate, it shall be lawful for the said Devisee or Devisees in Trust, notwithstanding any Trusts actually declared by the Testator, to raise such Debts, Legacy, or Money as aforesaid by a Sale and absolute Disposition by Public Auction or Private Contract of the said Hereditaments or any Part thereof, or by Mortgage of the same, or partly in one Mode and partly in the other, and any Deed or Deeds of Mortgage so executed may reserve such Rate of Interest and fix such Period or Periods of Repayment as the Person or Persons executing the same shall think proper."

Section 15. Powers given by last Section extended to Survivors, Devisees, &c.

"XV. The Powers conferred by the last Section shall extend to all and every Person or Persons in whom the Estate devised shall for the Time being be vested by Survivorship, Descent, or Devise, or to any Person or Persons who may be appointed under any Power in the Will, or by the Court of Chancery, to succeed to the Trusteeship vested in such Devisee or Devisees in Trust as aforesaid."

Section 16. Executors to have Power of raising Money, &c.

"XVI. If any Testator who shall have created such a Charge as is described in the Fourteenth Section shall not have devised the Hereditaments charged as aforesaid in such Terms as that his whole Estate and Interest therein shall

become vested in any Trustee or Trustees, the Executor or Executors for the time being named in such Will (if any) shall have the same or the like Power of raising the said Moneys as is hereinbefore vested in the Devisee or Devisees in Trust of the said Hereditaments, and such Power shall from Time to Time devolve to and become vested in the Person or Persons (if any) in whom the Executorship shall for the Time being be vested; but any Sale or Mortgage under th s Act shall operate only on the Estate and Interest, whether legal or equitable, of the Testator, and shall not render it unnecessary to get in any outstanding subsisting legal Estate."

22nd & 23rd Vic., cap. 35. where there is no sufficient Devise.

"XVII. Purchasers or Mortgagees shall not be bound to inquire whether the Powers conferred by Sections Fourteen, Fifteen, and Sixteen of this Act, or either of them, shall have been duly and correctly exercised by the Person or Persons acting in virtue thereof."

Section 17. Purchasers, &c., not bound to inquire as to Powers.

"XVIII. The Provisions contained in Sections Fourteen, Fifteen, and Sixteen shall not in any way prejudice or affect any Sale or Mortgage already made or hereafter to be made, under or in pursuance of any Will coming into operation before the passing of this Act, but the Validity of any such Sale or Mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several Sections shall not extend to a Devise to any Person or Persons in Fee or in Tail, or for the Testator's whole Estate and Interest charged with Debts or Legacies, nor shall they affect the Power of any such Devisee or Devisees to sell or mortgage as he or they may by Law now do."

Section 18. Sections 14, 15, and 16 not to affect certain Sales, &c., nor to extend to Devisees in Fee or in Tail.

Inheritance.

"XIX. Where there shall be a total Failure of Heirs of the Purchaser, or where any Land shall be descendible as if an Ancestor had been the Purchaser thereof, and there shall be a total Failure of the Heirs of such Ancestor, then and in every such Case the Land shall descend and the Descent shall thenceforth be traced from the Person last entitled to the Land as if he had been the Purchaser thereof."

Section 19. Descent, how to be traced.

Section 20. Preceding Section incorporated with 3 & 4 Wm. 4, c. 106.

"XX. The last preceding Section shall be read as Part of the Act 'For the Amendment of the Law of Inheritance,' of the Session of the Third and Fourth Years of the Reign of King *William* the Fourth, Chapter One hundred and six."

Assignment of Personalty.

Section 21. Assignment to self and others.

"XXI. Any person shall have Power to assign Personal Property, now by law assignable, including Chattels Real, directly to himself and another Person or other Persons or Corporation, by the like Means as he might assign the same to another."

Purchasers.

Section 22. After Dec. 31, 1859, Provision as to Re-registry, contained in 2 & 3 Vict. c. 11. and 18 & 19. Vict. c. 15, to apply to Crown Debts.

"XXII. From and after the Thirty-first Day of *December*, One thousand eight hundred and fifty-nine, the Provision for Re-registry of Judgments, Decrees or Orders, Rules or Orders, contained in the Act of the Session of the Second and Third Years of Queen *Victoria*, Chapter Eleven, as explained and amended by the Act of the Session of the Eighteenth and Nineteenth Years of Queen *Victoria*, Chapter Fifteen, shall extend and apply to every such Judgment, Statute, Recognizance, Inquisition, Obligation, Specialty, or Acceptance of Office as is by Section Eight of the first-mentioned Act required to be registered, so that it shall be obligatory on the Crown, in order to bind the Lands, Tenements, or Herditaments of its Debtors or Accountants, as against Purchasers, Mortgagees, or Creditors becoming such after the Thirty-first Day of *December*, One thousand eight hundred and fifty-nine, to re-register, in like manner as it is obligatory on a private Person, and so that Notice of any such Judgment, Statute, Recognizance, Inquisition, Obligation, Specialty, or Acceptance of Office, not duly re-registered, shall not avail against Purchasers, Mortgagees, or Creditors becoming such after the Thirty-first Day of *December*, One thousand eight hundred and fifty-nine, as to Lands, Tenements, or Hereditaments; and this Provision shall apply to every such Judgment, Statute, Recognizance, Inquisition, Obligation, Specialty, or Acceptance of Office as since the

passing of the first-mentioned Act has been registered under the Provisions therein contained, or as shall hereafter be so registered: This Section shall not extend to *Ireland.*" 22nd & 23rd Vic., cap. 35.

"XXIII. The *bonâ fide* Payment to and the Receipt of any Person to whom any Purchase or Mortgage Money shall be payable upon any express or implied Trust shall effectually discharge the Person paying the same from seeing to the Application or being answerable for the Misapplication thereof, unless the contrary shall be expressly declared by the Instrument creating the Trust or Security." Section 23. Not to be bound to see to the Application of Purchase Money.

"XXIV. Any Seller or Mortgagor of Land, or of any Chattels, Real or Personal, or Choses in Action conveyed or assigned to a Purchaser, or the Solicitor or Agent of any such Seller or Mortgagor, who shall after the passing of this Act conceal any Settlement, Deed, Will, or other Instrument material to the Title or any Incumbrance from the Purchaser, or falsify any Pedigree upon which the Title does or may depend, in order to induce him to accept the Title offered or produced to him, with intent in any of such Cases to defraud, shall be guilty of a Misdemeanour, and being found guilty shall be liable, at the Discretion of the Court, to suffer such Punishment, by Fine or Imprisonment for any Time not exceeding Two Years, with or without Hard Labour, or by both, as the Court shall award, and shall also be liable to an Action for Damages at the Suit of the Purchaser or Mortgagee, or those claiming under the Purchaser or Mortgagee, for any Loss sustained by them or either or any of them in consequence of the Settlement, Deed, Will, or other Instruments or Incumbrance so concealed, or of any Claim made by any Person under such Pedigree, but whose Right was concealed by the Falsification of such Pedigree; and in estimating such Damages, where the Estate shall be recovered from such Purchaser or Mortgagee, or from those claiming under the Purchaser or Mortgagee, regard shall be had to any Expenditure by them or either or any of them in Improvements on the Land; but no Prosecution for any Offence included in this Section against any Seller or Mortgagor, or any Solicitor or Agent, shall be commenced without the Sanction of Her Majesty's Attorney General, or in case that Office be vacant of Her Section 24 Punishment of Vendor, &c., for fraudulent Concealment of Deeds, &c., or falsifying Pedigree.

Majesty's Solicitor General; and no such Sanction shall be given without such previous Notice of the Application for Leave to prosecute to the Person intended to be prosecuted as the Attorney General or the Solicitor General (as the Case may be) shall direct."

Section 25. Interpretation of Terms.

"XXV. In the Construction of the previous Provisions in this Act the Term "Land" shall be taken to include all Tenements and Hereditaments, and any Part or Share of or Estate or Interest in any Tenements or Hereditaments, of what Tenure or Kind soever; and

The Term "Mortgage" shall be taken to include every Instrument by virtue whereof Land is in any Manner conveyed, assigned, pledged, or charged as Security for the Repayment of Money or Money's Worth lent, and to be reconveyed, re-assigned, or released on Satisfaction of the Debt; and

The Term "Mortgagor" shall be taken to include every Person by whom any such Conveyance, Assignment, Pledge, or Charge as aforesaid shall be made; and

The Term "Mortgagee" shall be taken to include every Person to whom or in whose Favour any such Conveyance, Assignment, Pledge, or Charge as aforesaid is made or transferred:

The Term "Judgment" shall be taken to include registered Decrees, Orders of Courts of Equity and Bankruptcy, and other Orders, having the Operation of Judgments."

Trustees and Executors.

Section 26. Trustee, &c., making payment under Power of Attorney not to be liable by reason of Death of Party giving such Power.

"XXVI. No Trustee, Executor, or Administrator making any Payment or doing any Act *bonâ fide* under or in pursuance of any Power of Attorney shall be liable for the Moneys so paid or the Act so done, by reason that the Person who gave the Power of Attorney was dead at the Time of such Payment or Act, or had done some Act to avoid the Power, provided that the Fact of the Death, or of the doing of such Act as last aforesaid, at the Time of such Payment or Act *bonâ fide* done as aforesaid by such Trustee, Executor, or Administrator was not known to him: Provided always, that nothing herein contained shall in any Manner affect or prejudice the Right of any Person entitled to the Money against the Person

to whom such Payment shall have been made, but that such Person so entitled shall have the same Remedy against such Person to whom such Payment shall be made as he would have had against the Trustee, Executor, or Administrator if the Money had not been paid away under such Power of Attorney."

22nd & 23rd Vic., cap. 35.

"XXVII. Where an Executor or Administrator, liable as such to the Rents, Covenants, or Agreements contained in any Lease or Agreement for a lease granted or assigned to the Testator or Intestate whose Estate is being administered, shall have satisfied all such Liabilities under the said Lease or Agreement for a Lease as may have accrued due and been claimed up to the Time of the Assignment hereafter mentioned, and shall have set apart a sufficient Fund to answer any future Claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the Lessee to be laid out on the Property demised or agreed to be demised, although the Period for laying out the same may not have arrived, and shall have assigned the Lease or Agreement for a Lease to a Purchaser thereof, he shall be at liberty to distribute the Residuary Personal Estate of the Deceased to and amongst the Parties entitled thereto respectively, without appropriating any Part or any further Part (as the case may be), of the Personal Estate of the Deceased to meet any future Liability under the said Lease or Agreement for a Lease; and the Executor or Administrator so distributing the Residuary Estate shall not, after having assigned the said Lease or Agreement for a Lease, and having, where necessary, set apart such sufficient Fund as aforesaid, be personally liable in respect of any subsequent Claim under the said Lease or Agreement for a Lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the Assets of the Deceased into the Hands of the Person or Persons to or amongst whom the said Assets may have been distributed."

Section 27. As to Liability of Executor or Administrator in respect of Rents, Covenants, or Agreements.

"XXVIII. In like Manner, where an Executor or Administrator liable as such to the Rent, Covenants, or Agreements contained in any Conveyance on Chief Rent or Rent-charge (whether any such Rent be by Limitation of Use, Grant, or Reservation) or Agreement for such Conveyance, granted or assigned to or made and entered into with the Testator or

Section 28. As to Liability of Executor, &c. in respect of Rents, &c., including Conveyances.

on Rents-charge.

Intestate whose Estate is being administered, shall have satisfied all such Liabilities under the said Conveyance, or Agreement for a Conveyance, as may have accrued due and been claimed up to the Time of the Conveyance hereafter mentioned, and shall have set apart a sufficient Fund to answer any future Claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the Grantee to be laid out on the Property conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such Property or assigned the said Agreement for such conveyance as aforesaid, to a Purchaser thereof, he shall be at liberty to distribute the Residuary Personal Estate of the Deceased to and amongst the Parties entitled thereto respectively, without appropriating any Part or any further Part (as the Case may be) of the Personal Estate of the Deceased to meet any future Liability under the said Conveyance or Agreement for a Conveyance; and the Executor or Administrator so distributing the Residuary Estate shall not, after having made or executed such Conveyance or Assignment, and having where necessary, set apart such sufficient Fund as aforesaid, be personally liable in respect of any subsequent Claim under the said Conveyance, or Agreement for Conveyance; but nothing herein contained shall Prejudice the Right of the Grantor, or those claiming under him, to follow the Assets of the Deceased into the hands of the Person or Persons to or among whom the said Assets may have been distributed."

Section 29. As to Distribution of the Assets of Testator or Intestate after Notice given by Executor or Administrator.

"XXIX. Where an Executor or Administrator shall have given such or the like Notices as in the Opinion of the Court in which such Executor or Administrator is sought to be charged would have been given by the Court of Chancery in an Administration Suit, for Creditors and others to send in to the Executor or Administrator their claims against the Estate of the Testator or Intestate, such Executor or Administrator shall, at the Expiration of the Time named in the Notices or the last of the said Notices for sending in such Claims, be at liberty to distribute the Assets of the Testator or Intestate, or any Part thereof, amongst the Parties entitled thereto, having regard to the Claims of which such Executor or Administrator has then Notice, and shall not be liable for the Assets or any Part thereof so distributed to

any Person of whose Claim such Executor or Administrator shall not have had Notice at the Time of Distribution of the said Assets or a Part thereof, as the Case may be; but nothing in the present Act contained shall prejudice the Right of any Creditor or Claimant to follow the Assets or any Part thereof into the hands of the Person or Persons who may have received the same respectively."

22nd & 23rd Vic., cap. 35.

"XXX. Any Trustee, Executor, or Administrator shall be at liberty, without the Institution of a Suit, to apply by Petition to any Judge of the High Court of Chancery, or by Summons upon a written Statement to any such Judge at Chambers, for the Opinion, Advice, or Direction of such Judge on any Question respecting the Management or Administration of the Trust Property or the Assets of any Testator or Intestate, such Application to be served upon or the Hearing thereof to be attended by all Persons interested in such Application, or such of them as the said Judge shall think expedient; and the Trustee, Executor, or Administrator acting upon the Opinion, Advice, or Direction given by the said Judge shall be deemed, so far as regards his own responsibility, to have discharged his Duty as such Trustee, Executor, or Administrator in the Subject Matter of the said Application; provided nevertheless that this Act shall not extend to indemnify any Trustee, Executor, or Administrator in respect of any Act done in accordance with such Opinion, Advice, or Direction as aforesaid, if such Trustee, Executor, or Administrator shall have been guilty of any Fraud or wilful Concealment or Misrepresentation in obtaining such Opinion, Advice, or Direction; and the Costs of such Application as aforesaid shall be in the Discretion of the Judge to whom the said Application shall be made."

Section 30. Trustee, Executor, &c., may apply by Petition to Judge of Chancery for Opinion, Advice, &c., in Management, &c., of Trust Property

"XXXI. Every deed, Will, or other Instrument creating a Trust either expressly or by implication shall, without Prejudice to the clauses actually contained therein, be deemed to contain a Clause in the Words or to the effect following; that is to say, 'That the Trustees or Trustee for the time being of 'said Deed, Will, or other Instrument shall be respectively 'chargeable only for such Monies, Stocks, Funds, and Securi-'ties as they shall respectively actually receive notwith-'standing their respectively signing any Receipt for the sake

Section 31. Every Trust Instrument to be deemed to contain Clauses for the Indemnity and Reimbursement of the Trustees.

'of Conformity, and shall be answerable and accountable only 'for their own Acts, Receipts, Neglects, or Defaults, and not 'for those of each other, nor for any Banker, Broker, or other 'person with whom any Trust Monies or Securities may be 'deposited, nor for the insufficiency or Deficiency of any 'Stocks, Funds or Securities, nor for any other Loss, unless the 'same shall happen through their own wilful Default 'respectively and also that it shall be lawful for the Trustees 'or Trustee for the Time being of the said Deed, Will 'or other Instrument to reimburse themselves or himself, or 'pay or discharge out of the Trust Premises all Expenses in-'curred in or about the execution of the Trusts or Powers of 'the said Deed, Will, or other Instrument.' "

Section 32. As to Investments by Trustees.

"XXXII. When a Trustee, Executor, or Administrator shall not, by some Instruments creating his Trust, be expressly forbidden to invest any Trust Fund or Real Securities, in any Part of the United Kingdom, or on the Stock of the Bank of *England* or *Ireland*, or on *East India* Stock, it shall be lawful for such Trustee, Executor, or Administrator to invest such Trust Fund on such Securities or Stock, and he shall not be liable on that account as for a Breach of Trust, provided that such Investment shall in other respects be reasonable and proper."

Extent of Act.

Section 33. Act not to extend to Scotland.

"XXXII. This Act shall not extend to Scotland."

HINTS TO ADMINISTRATORS AS TO THE DISTRIBUTION OF PROPERTY IN CASES OF INTESTACY.

CHAPTER IV.

HITHERTO wills and the duties of Executors with regard thereto have alone been dealt with; it remains now to point out the duties of Administrators, and to show who are entitled to share in the distribution of an estate when the deceased has died intestate.

Previous to the 31st December, 1856, the distribution of an intestate's estate was not uniform all over the kingdom, the adminstrator having to divide it at times according to certain arbitrary customs which obtained in some localities which were not affected by the Statute of Distribution. Amongst these may be mentioned the well-known customs of the Cities of London and York, but with regard to all who have died subsequent to that date the mode of distribution is the same, and in order to show in what shares and among whom the estate should be divided there will be found at the end of the chapter, a table of the order of precedence, not only of the next-of-kin as to personal estate, but also of those who are entitled as the heirs-at-law to the real estate. There are one or two points besides this which it will not be amiss to bring more prominently before the reader, but previous to doing so it may be as well to show who are entitled to the grant of administration, and who are incapable of acting in that capacity.

The husband can claim under the civil law to be admitted as administrator of his wife's estate, and the wife, though she cannot claim it, is generally admitted, on her application for that purpose, by the Court, as administratrix of her husband

in preference to any of the next-of-kin, for the Court has the power in granting letters of administration to a deceased person to select any one of the persons entitled to share in his property, but before doing so, and issuing the grant, the others who are entitled in an equal degree are cited to appear, and with their consent, the Court will grant administration to the person applying for it. Should the intestate have died insolvent and the next-of-kin refuse to take out a grant of letters of administration to his estate, the Court will issue them to a creditor on his application. In the same way a grant will issue to a person acting under a power of attorney from the rightful administrator, when such administrator happens to be abroad. In fact the Court will grant letters of administration to any one applying for them, provided there be no opposition raised, and after all the persons entitled have been cited to appear or have given their consent in writing, and they will even issue a grant for a limited period, for instance during the minority of the children, or during the temporary insanity of the proper administrator, but as soon as the time for which the grant has been issued has expired, and it is necessary that there should be letters of administration granted to the rightful administrator, the Court will, on his making application, issue what is termed a cessate grant.

As the circumstances which disqualify a person from taking the office of administrator are similar to those already mentioned in Chapter 2, as preventing his acting as executor, a repetition of them is unnecessary; they must not be overlooked, however, and the reader is referred to the chapter alluded to.

Many of those acts which an executor may perform before the Probate has been obtained are not permitted to an administrator before the grant of administration has been issued, for, an executor is appointed by the will, and is clothed with a certain amount of authority from the death of the testator, whilst an administrator only takes *his* authority from the grant of letters of administration, and until he has

obtained proper sureties to enter into a bond (of double the amount of the value of the estate) for the due performance of his oath, to distribute the estate in accordance with the law, and the Court have thus constituted him administrator, he has no authority whatever. So any act done by an intending administrator before the grant has been obtained, must be done at his own proper risk, for should it not benefit the estate, and the estate be afterwards thrown into Chancery for administration, it would be held that the estate was not bound by the Act done, and any loss incurred would have to be made good by the person so acting.

A person intending to administer to the estate of one who has died intestate, will have in the first instance to find two friends who will be willing to become bound for him in a penal sum of double the amount of the sum under the value of which the estate is subsequently sworn, as sureties that he will "Well and truly administer all and every the goods of the said deceased, and pay his debts so far as his goods will extend;" for instance, should the value of the estate be estimated as under £1,000, the bond to be entered into by the sureties will be for £2,000. Where, however, the value of the estate is under £40 no sureties are required and no bond is given, and a husband need only give one surety to his wife's estate.

The mode of proceeding to obtain letters of administration at the Registry is almost identical with that of proving a will, the intending administrator has to make out a schedule of assets, obtain his affidavits in accordance with the forms, copies of which are annexed, have the oath administered to him by a Commissioner of the High Court of Justice, or at the Registry, and in fact go through all those forms of procedure described in Chapter 2. But should the value of the entire estate of the deceased be under £100, then by the 36 and 37 Vic., cap. 52 (being an Act for the Relief of Widows and Children of Intestates where the personal estate is of small value), and by the 38th and 39th Vic., cap. 27, (which extends the provisions of the former Act to the children of

intestate widows whose estate does not exceed £100 in value), the widow and children of an intestate and the children of intestate widows are enabled, should they reside more than three miles from the Registry, to apply to the County Court within the district, and the Registrar will fill up the forms, administer the oath, and do all those acts for the intending administratrix or administrator that would be done for them at the Registry, and the only fee payable will be 5s. where the estate is of the value of £20, and 1s. more for every £10 over that amount. The first-mentioned Act being a short one is here set out :—

"*An Act for the Relief of Widows and Children of Intestates where the personal estate is of small value.—28th July,* 1873.

36 & 37 Vic., cap. 52.

"Whereas many poor persons die intestate, possessed of property of small amount, and it is desirable to increase the facilities for taking out letters of administration to their estates and effects, and to reduce the expenses attending the same :

"Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

For purposes of Act application may be made to a Registrar of a county court.

"1. Where the whole estate and effects of an intestate shall not exceed in value the sum of one hundred pounds, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the Registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intes-

tate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this Act.

Identity of person may be required.

"2. The registrar of the county court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Registrar may refuse to take affidavit.

"3. If the registrar of the county court has reason to believe that the whole estate and effects of which the intestate died possessed exceeds in value one hundred pounds, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Registrars may exercise powers of Commissioners of Court of Probate.

"4. All registrars of county courts shall for the purposes of this Act have power and are hereby authorised to administer oaths, and to take declarations and affirmations, and to exercise any other powers which can be exercised by Commissioners of the Court of Probate. In the necessary absence of the registrar of the county court, applicants may be sworn and execute any necessary documents at the office of the said registrar before any Commissioner of the Court of Probate.

Powers to frame rules, orders, &c.

"5. Any rules and orders and tables of fees requisite for carrying this Act into operation shall be framed and may from time to time be altered by the Judge of the Court of Probate, subject as regards the tables of fees to the approval of the Commissioners of Her Majesty's Treasury; and such proportions of the said fees as the said judge, with such approval as aforesaid, shall think proper, may be made payable to the registrars of the county courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule to this Act.

Not to affect duty on administration.

"6. Provided always, that nothing herein contained shall be construed to affect any duty now payable on letters of administration.

Application of Act to Ireland.

"7. The provisions of this Act shall apply to Ireland, subject to the modifications following; (that is to say),

"The term "the Registrar of the County Court" shall be construed to mean the "Registrar of the Civil Bill Court."

"The term "Court of Probate" shall be construed to mean the "Court of Probate in Dublin."

SCHEDULE.

Where the whole estate and effects of the intestate shall not exceed in value twenty pounds, the sum of five shillings; and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds.

As an executor to a will has 12 months given him by law to get in and realize the estate of a testator, so the law allows 12 months to an administrator for the same purpose, and until the expiration of that time the next-of-kin cannot compel him to distribute the estate among them.

As the husband can claim under the civil law to be admitted as the administrator of his wife, so also by the same law he can claim the entire estate of his wife; but in order to enable him to obtain any property belonging to him *jure mariti* to which his wife might have become entitled under a will or some other instrument, but which did not fall into possession until after her death, he must take out a grant of administration to her effects to the full value of such property, in order to make a legal title to it.

Should any property have been settled on the wife "in lieu of dower or her thirds," she will not be entitled to share in her husband's personal estate along with the next-of-kin; but the administrator will distribute the assets among the next-of-kin, exclusive of the wife.

It will be observed on inspecting the table of distribution at the end of the chapter that the wife of an intestate never becomes entitled by law to the whole of her husband's estate, but that she takes a third, or a moiety, with the deceased's relations, according to the degree of consanguinity of such relations to the deceased; but should the intestate die leaving no relations, then the wife will take no more than one moiety, the Crown taking the other.

Where the deceased intestate happens to be illegitimate, the only persons who can possibly inherit from him are his wife and children, and therefore should he die without leaving either one or the other, the Crown will take the whole. It has been asserted that his mother was in such a case as much entitled as his wife or children to take as his next-of-kin; but this cannot be maintained, for he is assumed by law to be "nullius filius" (the child of no one).

It may be stated, however, that should there be brothers and sisters, or even more remote relations who would have been legally entitled to the property had the deceased been born in wedlock, upon a special application, in the shape of a memorial to the Solicitor of the Treasury, setting forth all the facts of the case, the Crown will generally, after retaining a certain proportion of the assets, give back the remainder to the petitioner.

Should the intestate have died possessed of real property and not have barred her dower by any act done in his lifetime the wife will be entitled to one-third of the rents for her life. So where the wife was possessed of real estate, and there was issue of the marriage who might have inherited, the husband will be entitled to take the whole of the rents for his life, in which case he is said to be tenant by the courtesy.

Real estate belonging to the wife does not pass to the husband's heir-at-law on his death, but it survives to the wife, and any bond or covenant entered into by her whereby the estate is charged at the instigation of the husband with any sum of money by way of loan, is held not to be binding on her at his death. So also leaseholds, which belonged to the wife before marriage, do not pass to the husband's next-of-kin at his death, but survive to her should she be then living. Williams, in his Treatise on the Law of Executors, ch. 1 & 2, section 2, page 611, says:—"The law gives a qualified interest to the husband in the chattels real of which the wife is or may be possessed during marriage, viz., an interest in his wife's right, with a power of divesting her property during coverture. If, therefore, he disposes of his wife's terms or other chattels real by a complete act in his lifetime, her right by survivorship will be defeated; but if he leave them in *statu quo*, and the wife be the survivor, she will be entitled to them to the exclusion of the executors and administrators of her husband."

Where the next-of-kin of the deceased are his children and any of them have had advances or any substantial provision made to them by the deceased in his lifetime, the administrator will, in distributing the estate, have to take into account the value of such advancements, and diminish by so much the shares of the next-of-kin so provided for, in such a case the value in question is said to be brought into "Hotchpot," and the 5th section of the 22 and 23, Car. 2, cap. 10, under which this principle of "Hotchpot" is enacted declares as follows:—"And in case any child other than the heir-at-law, who shall have any estate by settlement from the intestate, or shall be advanced by the intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate and were advanced in the lifetime of the intestate, as shall make the estate of all the

22 & 23 Car. 2, cap. 10, sec. 5.

said children to be equal as near as can be estimated; but the heir-at-law, notwithstanding any land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children without any consideration of the value of the land which he hath by descent or otherwise from the intestate."

Before, however, bringing in the advancements for the purpose of dividing the estate among the children, the widow is entitled to her clear one-third of the surplusage of the estate after the payment of the debts, funeral and just expenses, and to the residue only should be added the advancements.

As an example of this operation let it be supposed that an administrator finds himself with one thousand pounds to distribute amongst the widow and three children, A, B and C, of the deceased, but that he is aware that A has had £100 advanced to him on entering business, whilst the intestate has expended £80 in apprenticing B; here the administrator will, in the first place, divide the £1,000 into three parts, one of which, viz., £333. 6s. 8d., he will pay over to the widow; this will leave £666. 13s. 4d., to which must be added the two sums amounting to £180, making a total of £846. 13s. 4d., to be divided among the three children in the following manner:—

	£	s.	d.	
	£846	13	4	
One-third	282	4	5	
From which deduct the advancement of	100	0	0	
Leaving	182	4	5	payable to A.
Another one-third	282	4	5	
From which deduct the advancement of	80	0	0	
Leaving	202	4	5	payable to B.
And the remaining 1-3rd ...	282	4	6	payable to C.

which, if all the sums are added together as follows, will produce exactly the £1,000 the administrator has to divide:—

The Widow	...	...	£333	6	8
A's share ...	...	...	182	4	5
B's share ...	...	...	202	4	5
C's share ...	...	...	282	4	6
			£1,000	0	0

Where *all* the children of an intestate die in his lifetime leaving children, these grandchildren will take the intestate's estate in equal shares whether the numbers of the children of each parent were equal or not; thus, suppose the intestate had two children, A and B, both of whom died in his lifetime, A leaving five children and B only one, the six grandchildren would take each one-sixth of the intestate's estate; but should he have had four children, A, B, C and D, of whom the last two only died, leaving children behind them, the distribution would be different, A and B taking one-fourth each of the estate, the children of C one-fourth among them in equal shares, and the children of D the remaining one-fourth equally among them.

The distribution of the estate of an intestate among his next of kin, should they be children or grandchildren, brothers and sisters, or nephews and nieces, is not a very difficult or complicated proceeding, but where more remote relations are concerned, and especially where deaths have taken place of parents, and their children are entitled to a share of the property as standing in their place, it is very difficult to ascertain with accuracy who really should be admitted to share in the distribution of the estate; under these circumstances it would be absolutely necessary for the administrator to consult some solicitor, lest, having divided the property, a claim from persons entitled to share be brought against himself.

Annexed is a Table, shewing the distribution of personalty and heirship to real estate, followed by a list of the stamp duties payable on the grants of administration, and the forms of affidavits, &c., necessary to be used, as well as the tables of fees to be taken in the Principal and District Registries of the Court of Probate.

SUCCESSION TABLE TO REAL AND PERSONAL PROPERTY.

Under 3 & 4 Wm. IV., c. 106, 22 & 23 Car. II., c. 10, 29 Car. II., c. 30, and 1 Jac. II., c. 17.

Customs of London and York and other places are now abolished so far as they affect *personal* property of persons dying after 31st Dec., 1856, 19 & 20 Vic., c. 94; but the customs of Gavelkind and Borough English still affect *real* property in certain localities.

The following is a short table showing how property is distributed in cases where the owner dies entitled in his own right, without having made a will or settlement; the fourth column also shows what persons would be entitled to Letters of Administration entitling them to the right of receiving and distributing the personal estate.

N.B.—In each instance it is supposed there are no nearer relations than those named.

If a person die leaving	*LAND.—Real Property, (except leaseholds), would descend*	*MONEY.—Personal Property, (including leaseholds,) would be divided*	*Persons entitled to administration*
Wife and no relations	One-third to wife for life, rest to the Crown if the deceased had the legal estate (copyholds to the Lord of the Manor) (*Note A.*)	Half to wife, rest to the Crown	Wife.
Wife and father	One-third to wife for life, rest to father if the deceased had acquired the fee by purchase and not by descent. (*Note A.*)	Equally	Wife.
Wife and mother	One-third to wife for life, rest to mother in default of any heirs on father's side (*Note A.*)	Equally (*Kelloway v. Kelloway*, 2 P. Wms., 344.)	Wife.
Wife, father, brothers, and sisters	One-third to wife for life, rest to father if the deceased had acquired the fee by purchase and not by descent. (*Note A.*)	Equally between wife and father.	Wife.
Wife, mother, brothers, and sisters, whether by whole or half-blood	One-third to wife for life, rest to eldest brother (by whole blood) (*Note A.*)	Half to wife, rest equally divided between mother, brothers, and sisters	Wife.
Wife, mother, nephews, and nieces (children of deceased brother)	One-third to wife for life, rest to nephew (eldest son of brother) or nieces (daughters of deceased brother if he left no son (*Note A.*)	Half to wife, one-fourth to mother, rest between nephews and nieces (*Stanley v. Stanley*, 1 *Atk.*)	
Wife, brothers, and sisters	One-third to wife for life, rest to eldest brother (*Note A.*)	Half to wife, rest equally to brothers and sisters	Wife.
Wife, sons, and daughters (*Note C.*)	One-third to wife for life, rest to eldest son (*Note A.*)	One-third to wife, rest equally amongst sons and daughters	Wife.
Wife and daughter (*Note C.*)	One-third to wife for life, rest to daughter (*Note A.*)	One-third to wife, rest to daughter	Wife.
Wife and daughters (*Note C.*)	One-third to wife for life, rest equally between daughters (*Note A.*)	One-third to wife, rest equally between daughters	Wife.
Wife and grandchildren, (sons of deceased son)	One-third to wife for life, rest to eldest grandchild (*Note A.*)	One-third to wife, rest equally between grandchildren	Wife.
Husband, (where there has been issue born alive capable of inheriting the realty)	All for life, afterwards to heir at law (*Note B.*)	All	Husband.
Husband (where there has not been issue born alive capable of inheriting the realty)	To heir at law	All to husband	Husband.
Husband, sons and daughters	All to husband for life, afterwards to eldest son (*Note B.*)	All to husband	Husband.
Husband and child (son or daughter)	All to husband for life, afterwards to child (*Note B.*)	All to husband	Husband.
Husband and daughters	All to husband for life, afterwards to daughters equally (*Note B.*)	All to husband	Husband.
Husband and grandchildren (daughters of deceased son or daughter)	All to husband for life, afterwards to grandchildren equally (*Note B.*)	All to husband	Husband.

If a person dies leaving	*LAND.—Real Property, except leaseholds), would descend*	*MONEY.—Personal Property, (including leaseholds), would be divided*	*Persons entitled to administration.*
Sons & daughters, whether by one or more wife or wives, & whether or not posthumous	All to eldest son . . .	Equally divided (*Wallis v. Hodson*, 2 *Atk.*, 117.)	Either son or daughter, or any number not exceeding three of either or both.
One child, either son or daughter	All	All	Child.
Daughters	Equally divided	Equally divided . . .	Either or any number of them not exceeding three.
(Eldest) son and grandchild (son or daughter of younger son)	All to eldest son . . .	Equally divided . . .	Eldest son.
(Younger) son and grandchild (son or daughter of eldest son)	All to grandchild . . .	Equally divided . . .	Younger son.
Eldest son, sons and daughters, and grandchildren	All to eldest son . . .	Equally divided (but grandchildren only take deceased parent's share equally between them)	To any son or daughter, or any number not exceeding three of either or both.
Daughters and grandchild (son or daughter of deceased son)	All to grandchild . .	Equally	To any daughter, or any number of them not exceeding three.
Daughters and granddaughters (children of deceased son)	All to granddaughters . .	Equally (but granddaughters only take their father's share between them)	To any daughter, or any number of them not exceeding three.
Daughters and grandchildren (sons and daughters of deceased daughter)	Equally between daughters and eldest son of deceased daughter	Equally (but grandchildren only take their parent's share equally between them)	To any daughter, or any number of them not exceeding three.
Grandchildren, sons and daughters of two sons and a daughter	All to grandson, eldest son of eldest son	Equally (*per capita*, *i.e.* in their own right.) (*Walsh v. Walsh*, 1 *Eq. Cas. Abr.*, 249 *pl.* 7—*S. C. Prec. Chan.* 74.)	To any grandchild, or any number of them not exceeding three.
Grandchildren (daughters of a son, and sons of a daughter)	All to granddaughters equally	Equally *per capita* . .	To any grandchild, or any number of them not exceeding three.
Grandchildren (sons and daughters of a daughter, and daughters of another daughter)	Half to eldest son of one daughter, and half equally between daughters of other daughter	Equally *per capita* . .	To any grandchild, or any number of them not exceeding three.
Deceased son's widow, and child (*Bridge v. Abbott*, 3 *Bro. C.C.* 224)	All to child	All to child	Child.
Grandchild and great grandchild, elder branch.	Great grandchild . . .	Grandchild	Grandchild.
Father and mother and brothers and sister.	All to father	All to father	Father.
Mother and brothers and sisters	All to eldest brother . .	Equally	Mother.
Mother and sister	All to sister	Equally	Mother.
Mother only	All (in default of any heirs on father's side)	All	Mother.
Sisters, and nephews, and nieces (children of deceased brother)	All to nephew, eldest son of deceased brother	Equally, but nephews and nieces take *per stirpes*, (*i.e.* their deceased parent's share)	To one or more of the sisters, not exceeding three.
Sisters, and nieces (children of deceased brother)	All to nieces equally	Equally, but nephews and nieces take *per stirpes*	To one or more of the sisters, not exceeding three.
Sisters, and nephews, and nieces (children of deceased sister)	Equally between sisters and nephew, eldest son of deceased sister	Equally, but nephews and nieces take *per stirpes*	To one or more of the sisters, not exceeding three.
Sisters, and nieces (children of deceased sister)	Equally, but nieces take *per stirpes*	Equally, but nieces take *per stirpes*	To one or more of the sisters, not exceeding three
Brother or sister of whole blood, and brother or sister of half-blood on father's side, and brother or sister of half-blood on mother's side	All to brother or sister of whole blood	Equally	Either or both.
Brother or sister of the half-blood on father's side, & distant cousin on father's side	All to half-brother or sister	All to half-brother or sister	Brother or sister of half-blood.
Brother or sister of half-blood on mother's side, and distant cousin on father's side	All to distant cousin on father's side	All to half-brother or sister	Brother or sister of half-blood.
Brothers and sisters, and grandfather or grandmother	All to eldest brother . .	Equally between brothers and sisters (*Evelyn v. Evelyn* 3 *Atk.* 762)	To one or more of brothers and sisters, not exceeding three.
Nephews and nieces by deceased brother and nephew, and nieces by deceased sister	All to eldest nephew (son of deceased brother)	Equally *per capita* (*i. e.* shared equally without reference to the number of each family)	To either of the nephews or nieces, or any number of one or both, not exceeding three.
Niece by deceased brother, and nephews and nieces by deceased sister	All to niece (daughter of deceased brother)	Equally *per capita* . .	To either of the nephews or nieces, or any number of one or both, not exceeding three.

If a person die leaving.	*LAND.—Real Property, (except leaseholds), would descend*	*MONEY.—Personal Property, (including leaseholds), would be divided*	*Persons entitled to administration.*
Nieces by deceased brother, and nephews and nieces by deceased sister	All to nieces (daughters of deceased brother)	Equally *per capita* . .	To either of the nephews or nieces, or any number of one or both, not exceeding three.
Nephews and nieces by one deceased sister, and nieces by another deceased sister	Half to eldest nephew by one deceased sister, and half equally between nieces by other deceased sister	Equally *per capita* . .	To either of the nephews or nieces, or any number of one or both, not exceeding three.
Nephew (son of deceased sister) and great niece, granddaughter of deceased brother	Great niece	Nephew (*Pett v. Pett*, 1 *Salk.* 250)	Nephew.
Niece (brother or sister's daughter) and great nephew (eldest brother's grandson)	All to great nephew, eldest brother's grandson	All to niece, brother's, or sister's daughter	Niece.
Father's father, or mother and mother's father or mother	All to father's father or mother	Equally (*Moor v. Badham, cited in Blackborough v. Davis, P. Wms.* 53)	To either or both.
Grandfather, great grandfather, uncle and aunt on father's side, and grandfather, uncle, and aunt, on mother's side	All to grandfather, on father's side	Equally between two grandfathers	To either or both grandfathers.
Grandfather on mother's side, and uncle or aunt on father's side	All to uncle or aunt	All to grandfather . . .	Grandfather.
Grandmother, uncle, or aunt (all on same side)	All to uncle or aunt . .	All to grandmother. (*Montney v. Petty, Prec. Chan.*, 506)	Grandmother.
Grandmother on father's side, and uncle or aunt on mother's side	All to grandmother . .	All to grandmother (*Montney v. Petty, Prec. Chan.*, 506)	Grandmother.
Great grandfather, uncles and aunts on father's side	All to eldest uncle . .	Equally, *per capita* (*Lloyd v. Tench*, 2 *Ves. Sen.*, 215.)	To either or any number not exceeding three of either or both.
Uncles and aunts on mother's side, and nephews (sons of deceased sister) and nieces (daughters of a deceased brother)	Equally between nieces, daughters of brother	Equally *per capita* . .	To either or any number not exceeding three of either or both.
Uncles and aunts on father's side, and uncles and aunts on mother's side	All to eldest uncle on father's side	Equally among them . .	To either or any number not exceeding three of either or both
Aunts on father's side, and uncles or aunts on mother's side	All equally to aunts on father's side	Equally among them . .	To either or any number not exceeding three of either or both.
Cousins	The eldest son of the deceased father's eldest brother (or according to heirship, as the case may be)	Equally, *per capita* . .	To either or any number not exceeding three of either or both.
Uncle on mother's side, and cousin (son of another uncle on father's side)	All to cousin	All to uncle	Uncle.
No relations . . .	All to the Crown (copyholds would go to the Lord of the Manor)	All to the Crown . . .	To the Crown, or to a creditor, should he apply.

Note A.—The wife is only entitled to the third of the gross rental of real estate for life as her dower, but in many cases this is barred, and she then takes no interest in the real estate.

Note B.—This only applies to real estate in possession, the husband would take no benefit from his wife's reversionary interests in real estate.

Note C.—Children who have had advances from the *father* in the lifetime are to bring them into account.

Note D.—The above table to successions to real property does not extend to the decease of any person dying before 1st January, 1834, nor to Gavelkind lands in Kent and other places, nor to land held on Borough English Customs, nor to Copyholds, nor to Estates Tail.

A Table of the Stamp Duties on Grants of Administration.

Above the value of		£20	and under	£100	exempt.
,,	,,	100	,,	200	£3
,,	,,	200	,,	300	8
,,	,,	300	,,	450	11
,,	,,	450	,,	600	15
,,	,,	600	,,	800	22
,,	,,	800	,,	1,000	30
,,	,,	1,000	,,	1,500	45
,,	,,	1,500	,,	2,000	60
	,,	2,000	,,	3,000	75
,,	,,	3,000	,,	4,000	90
,,	,,	4,000	,,	5,000	120
,,	,,	5,000	,,	6,000	150
,,	,,	6,000	,,	7,000	180
,,	,,	7,000	,,	8,000	210
,,	,,	8,000	,,	9,000	240
,,	,,	9,000	,,	10,000	270
,,	,,	10,000	,,	12,000	300
,,	,,	12,000	,,	14,000	330
,,	,,	14,000	,,	16,000	375
,,	,,	16,000	,,	18,000	420
,,	,,	18,000	,,	20,000	465
,,	,,	20,000	,,	25,000	525
,,	,,	25,000	,,	30,000	600
,,	,,	30,000	,,	35,000	675
,,	,,	35,000	,,	40,000	785
,,	,,	40,000	,,	45,000	900
,,	,,	45,000	,,	50,000	1,010
,,	,,	50,000	,,	60,000	1,125
,,	,,	60,000	,,	70,000	1,350
,,	,,	70,000	,,	80,000	1,575
,,	,,	80,000	,,	90,000	1,800
,,	,,	90,000	,,	100,000	2,025
,,	,,	100,000	,,	120,000	2,250

Above the value of		120,000	and under	£140,000	£2,700
„	„	140,000	„	160,000	3,150
„	„	160,000	„	180,000	3,600
„	„	180,000	„	200,000	4,050
„	„	200,000	„	250,000	4,500
„	„	250,000	„	300,000	5,625
„	„	300,000	„	350,000	6,750
„	„	350,000	„	400,000	7,875
„	„	400,000	„	500,000	9,000
„	„	500,000	„	600,006	11,250
„	„	600,000	„	700,000	13,500
„	„	700,000	„	800,000	15,750
„	„	800,000	„	900,000	18,000
„	„	900,000	„	1,000,000	20,250
£1,000,000 and upwards, for every £100,000, and any fractional part of £100,000					2,250

[OATH FOR ADMINISTRATORS.]

In the High Court of Justice.

ROBATE, DIVORCE AND ADMIRALTY DIVISION
(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased

Insert the Names, Residences and Titles or Professions of the Parties applying for Administration.

[Or solemnly, sincerely, and truly affirm and declare.

make Oath and say, that
late of

Here state the manner in which all persons having a prior right are cleared off.

deceased died intestate

Here state the capacity in which the parties apply for Administration.

and that

In all cases where applicable add "only next of kin," or "one of the next of kin."

that will faithfully administer the personal Estate and Effects of the said deceased by paying just debts, and distributing the residue of said Estate and Effects according to law; that will exhibit a true and perfect Inventory of all and singular the said Estate and Effects, and render a just and true account thereof whenever required by law so to do; that the said deceased died at

Insert place of death, or set forth the reason why the same cannot be furnished.

FORM OF JURAT.

If one Deponent only.
"*Sworn at on the &c.*"
If more than one Deponent.
"*Sworn by the said and at on the &c.*"

on the day of 18 ;
and that the whole of the personal Estate and Effects of the said deceased does not amount in value to the sum of pounds,
to the best of knowledge, information, and belief.

Sworn

on the day of
18 , before me

Affidavit.—Inland Revenue.

Leaseholds.

[FOR ADMINISTRATORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

the part applying for Letters of Administration of the personal Estate and Effects of late of

[or solemnly, sincerely, and truly affirm and declare.]

deceased, make Oath, That the said deceased died on the day of One thousand hundred and at

Insert the place o death, or set forth the reason why the same cannot be furnished.

and that the personal Estate and Effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which Letters of Administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, including the Leasehold Estate or Estates for years of the said deceased, whether absolute or determinable on a life of lives, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information, and belief.

FORMS OF JURAT.

If one Deponent only.
"*Sworn at on the &c.*"

If more than one Deponent.
"*Sworn by the said and at on the &c.*"

Sworn

on the day of

18 , before me

K

Affidavit.—Inland Revenue.

No Leaseholds.

[FOR ADMINISTRATORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.
(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names, Residences and Titles or Professions of the Persons making the Affidavit.

the part applying for Letters of Administration of the personal Estate and Effects of
late of

[or solemnly, sincerely, and truly declare and affirm.]

Insert the place of death, or set forth the reason why the same cannot be furnished.

deceased, make Oath, That the said deceased died on the day of
One thousand hundred and
at

and that the personal Estate and Effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which Letters of Administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of knowledge, information and belief.

And lastly make Oath, that the said deceased was not possessed of or entitled to any Leasehold Estate or Estates for years, either absolute or determinable on a life or lives, to the best of knowledge, information, and belief.

FORMS OF JURAT.

If one Deponent only.
"*Sworn at on the &c.*"

If more than one Deponent.
"*Sworn by the said and at on the &c.*"

Sworn

on the 18 day of , before me

[Affidavit where Deceased died owing Mortgage debts secured on Leaseholds.]

Affidavit.—Inland Revenue.

[FOR ADMINISTRATORS.]

In the High Court of Justice.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(PROBATE.) THE PRINCIPAL REGISTRY.

In the Goods of

deceased.

Insert the Names Residences and Titles or Professions of the Persons making the Affidavit.

the part applying for Letters of Administration of the personal Estate and Effects of late of

deceased, in order to the due Administration of the personal Estate and Effects of the said deceased, who died on the day of 18 Intestate, *make Oath*,* That have made diligent search and due inquiry after and in respect of the Personal Estate and Effects of the said deceased, in order to ascertain the full amount and value thereof, and that to the best of knowledge, information, and belief, the whole of the Goods and Chattels, rights and credits, of which the said deceased died possessed are under the value of pounds, exclusive of what the deceased may have been possessed of or entitled to as a Trustee for any other person or persons, and not beneficially, and without deducting anything on account of the Debts due and owing from the deceased; except in respect of Leaseholds in Mortgage, and further that the particulars of the Debt so deducted are as follows, that is to say

[* or solemnly, sincerely and truly affirm and declare.]

"My" or "Our."

Here state briefly the date and particulars of the Mortgage Security in respect of every debt deducted.

and that the said Leaseholds are the sole security by way of Mortgage for the said debt

FORMS OF JURAT.

If one Deponent only "*Sworn at on the &c.*"

If more than one Deponent. "*Sworn by the said and at on the &c.*"

Sworn

on the day of

18 , before me

FORM OF ADMINISTRATION BOND.

KNOW All Men by these Presents, that We

are jointly and severally bound unto
the President of the Probate Division of Her Majesty's High Court of Justice, in the sum of
Pounds of good and lawful Money of *Great Britain*, to be paid to the said
or to the Judge of the Probate Division of the said Court for the time being, for which payment well and truly to be made we bind ourselves and
of us, for the Whole, our Heirs, Executors, and Administrators, firmly by these Presents. Sealed with our Seals. Dated the day of
in the Year of our Lord One Thousand Eight Hundred and seventy

The Condition of this Obligation is such, That if

deceased, who died on the day of
18 and the intended administrat of all and singular the personal Estate and Effects of the said deceased
do, when lawfully called on in that behalf make, or cause to be made, a true and perfect Inventory of all and singular the Personal Estate and Effects of the said Deceased

which have or shall come to Hands, Possession, or Knowledge, or into the Hands and Possession of any other Person for ,
and the same so made do exhibit, or cause to be exhibited, into the Principal Registry of the Probate Division of Her Majesty's High Court of Justice, whenever required by Law so to do. And the same Personal Estate and Effects ,
and all other the Personal Estate and Effects of the said Deceased at the time of death, which at any time after shall come to the Hands or Possession of the said
or into the Hands or Possession of any other Person or Persons for ,
do well and truly Administer according to Law (that is to say) do pay the Debts which did owe at decease: And further do make or cause to be made, a just and true Account of said Administration, whenever required by Law so to do, and all the Rest and Residue of the said Personal Estate and Effects,
do deliver and pay unto such Person or Persons as shall be entitled thereto under an Act of Parliament, intituled "*An Act for the better settling of Intestate Estates.*" And if it shall hereafter appear that any last Will and Testament was made by the said Deceased, and the Executor or Executors or other Persons therein named do exhibit the same into the Probate Division of the said Court, making request to have it allowed and approved accordingly, if the said
being thereunto required, do render and deliver the said Letters of Administration (approbation of such Testament being first had and made) in the said Court, then this Obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named

in the presence of

FEES

TO BE TAKEN IN

THE PRINCIPAL REGISTRY OF THE COURT OF PROBATE IN NON-CONTENTIOUS BUSINESS.

Probates or Letters of Administration with Will annexed, including double or cessate Probates or Letters of Administration with Will annexed, *de bonis non* or cessate, upon which stamp duty is payable in respect of the value of the Personal Estate of the Testator.

If the Personal Estate is sworn to be—

Under the value of £		s.	d.
£5	...	0	1	0
20	...	0	1	0
100	...	0	1	0
200	...	0	3	0
300	...	0	7	6
450	...	0	12	0
600	...	0	16	6
800	...	1	2	6
1,000	...	1	13	0
1,500	...	2	5	0
2,000	...	3	0	0
3,000	...	3	15	0
4,000	...	4	10	0
5,000	...	4	15	0
6,000	...	5	0	0
7,000	...	5	5	0
8,000	...	5	10	0
9,000	...	5	15	0
10,000	...	6	0	0
12,000	...	6	5	0
14,000	...	6	10	0
16,000	...	6	17	6
18,000	...	7	5	0
20,000	...	7	12	6
25,000	...	8	2	6
30,000	...	8	15	0

Under the value of £		s.	d.
35,000	...	9	7	3
40,000	...	10	6	0
45,000	...	11	5	6
50,000	...	12	3	6
60,000	...	13	2	6
70,000	...	15	0	0
80,000	...	16	17	6
90,000	...	18	15	0
100,000	...	20	12	6
120,000	...	21	11	3
140,000	...	23	8	9
160,000	...	25	6	3
180,000	...	27	3	9
200,000	...	29	1	3
250,000	...	30	18	9
300,000	...	35	12	6
350,000	...	40	6	3
400,000	...	41	17	6
500,000	...	43	8	9

For every additional £100,000 or any fractional part of £100,000 a further and additional fee of 3 2 6

Double or Cessate Probate, &c.

For every double or cessate Probate, or Letters of Administration with the Will annexed,

	£.	s.	d.
de bonis non or cessate, upon which no stamp duty is payable, when the Personal Estate is under £450 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £450 and upwards	0	12	6
For every duplicate and triplicate Probate, or Letters of Administration with the Will annexed, when the Personal Estate is under £450 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £450 and upwards	0	12	6

Exemplifications.

For every Exemplification of a Probate. or Letters of Administration with the Will annexed, in addition to the fees for engrossing and collating the Will and other documents registered with the same ...	1	1	0

Registering and Collating or Engrossing and Collating Wills.

For registering and collating or engrossing and collating Wills and other Documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio...	0	1	6
In case of Grants for Queen's Pay or Prize Money, the effects being under £100, without reference to the length of the Will	0	4	6
If there are pencil marks in a Will or Codicil, or if a Will or Codicil or any part thereof is to be or has been registered *fac simile*, in addition to any other Fee for registering and collating or for engrossing and collating the same:			
If the part or parts to be registered or engrossed *fac simile* are two folios of ninety words in length, or under ...	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already Proved.

For every Probate of a Codicil or Codicils, or Letters of Administration with a Codicil or Codicils annexed, being a Codicil or Codicils to a Will already proved, the same Fees respectively as on a duplicate Probate or duplicate Letters of Administration with Will annexed.

LETTERS OF ADMINISTRATION,

Including Letters of Administration *de bonis non* or cessate, upon which Stamp Duty is payable in respect of the personal Estate of an Intestate.

If the Personal Estate is sworn to be—

Under the value of—		£	s.	d.
£5	...	0	1	0
20	...	0	1	0
50	...	0	1	0
100	...	0	1	0
200	...	0	4	6
300	...	0	12	0
450	...	0	16	6
600	...	1	2	6
800	...	1	13	0
1,000	...	2	5	0
1,500	...	3	7	6
2,000	...	4	10	0
3,000	...	4	13	9
4,000	...	4	17	6
5,000	...	5	5	0
6,000	...	5	12	6
7,000	...	6	0	0
8,000	...	6	7	6
9,000	...	6	15	0
10,000	...	7	2	6
12,000	...	7	10	0
14,000	...	7	17	6
16,000	...	8	8	9
18,000	...	9	0	0
20,000	...	9	11	3
25,000	...	10	6	3
30,000	...	11	5	0

Under the value of—		£	s.	d.
£35,000	...	12	3	9
40,000	...	13	11	3
45,000	...	15	0	0
50,000	...	16	7	6
60,000	...	17	16	3
70,000	...	20	12	6
80,000	...	23	8	9
90,000	...	26	5	0
100,000	...	29	1	3
120,000	...	30	9	6
140,000	...	33	5	9
160,000	...	36	2	0
180,000	...	38	18	3
200,000	...	41	14	6
250,000	...	44	10	9
300,000	...	46	17	6
350,000	...	49	4	6
400,000	...	51	11	3
500,000	...	53	18	3

For every additional £100,000 or any fractional part of £100,000 a further and additional fee of ...4 13 6

Duplicate and Triplicate Letters of Administration, &c.

	£	s.	d.
For every duplicate and triplicate Letters of Administration when the Personal Estate is under £300, or any less sum than £300, the same fee as on a first Grant of Letters of Administration under the same sum.			
For every duplicate and triplicate Letters of Administration when the Personal Estate is of the value of £300 and upwards	0	12	6

Exemplifications.

For every exemplification of Letters of Administration	1	1	0

Administrations de bonis non or cessate.

For every Grant of Letters of Administration *de bonis non* or cessate, upon which no stamp duty is payable, when the Personal Estate is under £300 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £300 and upwards	0	12	6

Additional Security.

For noting on the Grant of Letters of Administration with or without Will annexed, and on the Act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

Searches and Inspection of Wills, &c.

For every search for Will or Grant of Letters of Administration or any document filed in the Principal Registry, including the looking up and inspecting an original Will before the same is registered, or a registered copy of a will or an Administration Act	0	1	0

	£	s.	d.
For every third Will or Administration Act looked up in addition to the above	0	1	0
For looking up and inspecting an original Will after the same is registered, in addition to the fee for the search	0	1	0
For looking up and producing any document filed in the Registry other than an original Will or Administration Act	0	1	0
For a search for a Will or Grant of Letters of Administration, and for reading the Will when the party applying is unable or unwilling to search for or read the same.			
For the search for each year or part of a year	0	0	6
For reading the Will:			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	0	6

Searches for former Grants.

For every search by an officer of the Principal Registry in order to ascertain whether any Probate or Grant of Letters of Administration has already issued, or any application has been made for a Grant of Probate or Administration, as under:—			
For every full year or part of a year which has elapsed since the deceased's death	0	0	6
In case it be requisite to extend the search to one or more District Registries, a similar additional fee for the search in each of such District Registries.			

Special and Limited Grants.

For every special or limited Grant of Probate or Letters of Administration with or without			

Duplicate and Triplicate Letters of Administration, &c.

	£	s.	d.
For every duplicate and triplicate Letters of Administration when the Personal Estate is under £300, or any less sum than £300, the same fee as on a first Grant of Letters of Administration under the same sum.			
For every duplicate and triplicate Letters of Administration when the Personal Estate is of the value of £300 and upwards	0	12	6

Exemplifications.

For every exemplification of Letters of Administration	1	1	0

Administrations de bonis non or cessate.

For every Grant of Letters of Administration *de bonis non* or cessate, upon which no stamp duty is payable, when the Personal Estate is under £300 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £300 and upwards	0	12	6

Additional Security.

For noting on the Grant of Letters of Administration with or without Will annexed, and on the Act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

Searches and Inspection of Wills, &c.

For every search for Will or Grant of Letters of Administration or any document filed in the Principal Registry, including the looking up and inspecting an original Will before the same is registered, or a registered copy of a will or an Administration Act	0	1	0

	£	s.	d.
For every third Will or Administration Act looked up in addition to the above	0	1	0
For looking up and inspecting an original Will after the same is registered, in addition to the fee for the search	0	1	0
For looking up and producing any document filed in the Registry other than an original Will or Administration Act	0	1	0
For a search for a Will or Grant of Letters of Administration, and for reading the Will when the party applying is unable or unwilling to search for or read the same.			
For the search for each year or part of a year	0	0	6
For reading the Will:			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	0	6

Searches for former Grants.

For every search by an officer of the Principal Registry in order to ascertain whether any Probate or Grant of Letters of Administration has already issued, or any application has been made for a Grant of Probate or Administration, as under:—			
For every full year or part of a year which has elapsed since the deceased's death	0	0	6
In case it be requisite to extend the search to one or more District Registries, a similar additional fee for the search in each of such District Registries.			

Special and Limited Grants.

For every special or limited Grant of Probate or Letters of Administration with or without

	£	s.	d.
For every additional folio or part of a folio	0	1	0
For office copy of a Will, Minute, Order, Decree, or any Document under Seal of the Court for which no other fee is payable:—			
For the Seal, in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings, and armorial bearings, &c., such fee as shall be determined by the Registrar in each particular case.			

Collating Documents.

For collating copy of a Probate and Will, or copy of Letters of Administration with or without the Will annexed, or any other instrument to be filed or deposited in the Registry, or for collating any copy or instrument with an original document already filed or deposited in the Registry, including the Registrar's certificate in verification thereof:—			
If ten folios of ninety words each, or under	0	2	6
If above ten folios of ninety words each, per folio	0	0	3
If there is any pencil writing copied or the copy or any part thereof is fac-simile, in addition to the above fees:—			
If such pencil writing or fac-simile copy is two folios of ninety words in length or under	0	0	6
For every additional folio or part of a folio	0	0	3

Attendances.

For attendance with any book or original document in any of the Courts of Law or Equity in London or Westminster, or elsewhere within three miles of the Principal Registry	1	1	0
For the second and each subsequent attendance in the same term or sittings after term ...	0	10	6

	£	s.	d.
For attendance with books or original documents in any of the Courts of Law or Equity in London or Westminster, or elsewhere within three miles of the Principal Registry, when more than one book or document are required, for each book or document besides the first ...	0	5	0
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first ...	0	2	6
For each day's attendance with any book or original documents in any Courts of Law or Equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents in any of the Courts of Law or Equity, or elsewhere beyond the distance of three miles from the Principal Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first ...	0	5	0

The travelling expenses to be advanced and paid to the messenger attending with books or original documents, shall include all other necessary expenses which are to be or may have been incurred by such messenger.

Registrar's Order.

For every Registrar's Order for revocation of a grant	0	5	0
For every other Registrar's Order	0	2	6

Filing.

For filing every affidavit or other document in the Principal Registry, except the oaths for executors, administrators, or administrators with the Will, the first Administration Bond and the Testamentary Papers in respect of

	£	s.	d.
which Probate or Administration with Will annexed is granted	0	2	6
For filing every Exhibit	0	1	0
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6
For filing in a District Registry any notice required to be sent there by a Registrar of the Principal Registry	0	0	6

Caveats.

For the entry of every Caveat	0	1	0
For each notice of such Caveat to the District Registrars	0	1	0
For every warning to a Caveat...	0	2	6
For every service of a warning to Caveat sent by a Registrar through the public post ...	0	2	6
For subducting a Caveat	0	1	0
For notice to any District Registrar to whom notice of a Caveat has been sent of its having been subducted or warned	0	1	0

Receipts for Papers.

For every receipt for documents left in the Principal Registry in order to obtain a grant of Probate or Letters of Administration with or without Will annexed, or any second or subsequent grant	0	1	0
For every receipt for a document or documents delivered out of the Principal Registry ...	0	1	0

Deposit of Wills.

For depositing every Will of a person deceased in the Principal Registry for safe custody ...	0	10	0
For depositing every Will of a living person for safe custody, including the deposit receipt	0	10	0

Taxing Costs.

	£	s.	d.
For taxing every Bill of Costs, inclusive of the Registrar's Certificate:			
If five folios of seventy-two words, or under	0	5	0
If exceeding that length, for every additional folio	0	1	0
For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed:			
If the bill of costs is five folios of seventy-two words, or under	0	1	0
If exceeding five folios of seventy-two words, and under fifteen folios... ...	0	2	6
If exceeding fifteen folios	0	5	0

Bonds.

For superintending and attesting the execution of a Bond	0	1	6
If not completed on one occasion, for each subquent attestation	0	1	0

Oaths.

For every oath administered by the Registrars, or by a Commissioner authorised to administer Oaths in the Principal Registry, to each deponent...	0	1	0
For marking each Exhibit	0	1	0

Settling Advertisements.

For settling the abstract of citation for advertisement or other advertisement	0	2	6

Alterations in Grants.

For making alterations in grants of Probate or Letters of Administration in pursuance of the order of one of the Registrars	0	2	6

Notations.

	£	s.	d.
For noting alterations in and revocations of grants on the record of the same	0	2	6
For noting second and subsequent grants on the record of the first grant	0	2	6
For noting renunciations, or any other necessary matter on the record of a grant ...	0	2	6

Certificates.

For every Certificate under the hand of one or more of the Registrars of the Principal Registry for which no other fee is payable ...	0	2	6

Fiats.

For the fiat of a Registrar as to the form in which any Will or Codicil is to be registered	0	5	0
For noting on a testamentary paper that Probate thereof is refused	0	5	0

Notices.

For every Notice required to be sent to a District Registrar for which no other fee is payable, except Notices required by Rule 72 ...	0	1	0

Perusing and Settling Oaths, &c.

For perusing and settling Oaths to lead special or limited Grants of Probate or Letters of Administration, with or without Will, or other Instruments:			
If five folios of seventy-two words, or under ...	0	2	6
If above five folios, for each additional folio ...	0	0	3
For perusing deeds and other documents when necessary, per folio of seventy-two words ...	0	0	3

Commissioner.

	£	s.	d.
For each appointment of a Commissioner to administer Oaths in the Court of Probate, other than clerks and officers of the court authorised to administer oaths in the Principal or in a District Registry only	1	0	0
For registering the appointment of a Commissioner appointed to administer oaths in the Court of Chancery	0	5	0

FEES TO BE TAKEN IN THE DISTRICT REGISTRIES OF THE COURT OF PROBATE.

Probates or Letters of Administration with Will annexed, including Double or Cessate Probates or Letters of Administration with Will annexed *de bonis non* or cessates upon which stamp duty is payable in respect of the value of the personal estate of the testator.

If the Personal Estate is sworn to be—

Under the value of	£	s.	d.	Under the value of	£	s.	d.
£5 ...	0	1	0	£12,000 ...	6	5	0
20 ...	0	1	0	14,000 ...	6	10	0
100 ...	0	1	0	16,000 ...	6	17	6
200 ...	0	3	0	18,000 ...	7	5	0
300 ...	0	7	6	20,000 ...	7	12	6
450 ...	0	12	0	25,000 ...	8	2	6
600 ...	0	16	6	30,000 ...	8	15	0
800 ...	1	2	6	35,000 ...	9	7	6
1,000 ...	1	13	0	40,000 ...	10	6	3
1,500 ...	2	5	0	45,000 ...	11	5	0
2,000 ...	3	0	0	50,000 ...	12	3	9
3,000 ...	3	15	0	60,000 ...	13	2	6
4,000 ...	4	10	0	70,000 ...	15	0	0
5,000 ...	4	15	0	80,000 ...	16	17	6
6,000 ...	5	0	0	90,000 ...	18	15	0
7,000 ...	5	5	0	100,000 ...	20	12	6
8,000 ...	5	10	0	120,000 ...	21	11	3
9,000 ...	5	15	0	140,000 ...	23	8	9
10,000 ...	6	0	0	160,000 ...	25	6	3

Under the value of £		£	s.	d.		£	s.	d.
180,000	...	27	3	9	For every additional £100,000 or any fractional part of £100,000 a further and additional fee of ...	3	2	6
200,000	...	29	1	3				
250,000	...	30	18	9				
300,000	...	35	12	6				
350,000	...	40	6	3				
400,000	...	41	17	6				
500,000	...	43	8	9				

Double or Cessate Probate, &c.

For every double or cessate Probate, or Letters of Administration with the Will annexed, *de bonis non* or cessate, upon which no stamp duty is payable, when the Personal Estate is under £450 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £450 and upwards	0	12	6
For every duplicate and triplicate Probate, or Letters of Administration with the Will annexed, when the Personal Estate is under £450 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £450 and upwards	0	12	6

Exemplifications.

For every exemplification of a Probate, or Letters of Administration with the Will annexed, in addition to the fees for engrossing and collating the Will and other Documents registered with the same	1	1	0

Registering and Collating or Engrossing and Collating Wills.

For registering and collating or engrossing and collating Wills and other Documents, if three folios of ninety words each, or under, including parchment	0	4	6

	£	s.	d.
If above three folios of ninety words each per folio	0	1	6
In cases of Grants for Queen's Pay or Prize Money, the effects being under £100, without reference to the length of the Will	0	4	6
If there are pencil marks in a Will or Codicil, or if a Will or Codicil, or any part thereof is to be or has been registered fac-simile, in addition to any other Fee for registering and collating or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac-simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

Codicils to Wills already Proved.

For every Probate of a Codicil or Codicils or Letters of Administration with a Codicil or Codicils annexed, being a Codicil or Codicils to a Will already proved, the same Fees respectively as on a duplicate Probate or duplicate Letters of Administration with Will annexed.

LETTERS OF ADMINISTRATION,

Including Letters of Administration *de bonis non* or cessate upon which stamp duty is payable in respect of the personal estate of an intestate.

If the personal estate is sworn to be—

Under the value of	£	s.	d.	Under the value of	£	s.	d.
£5 ...	0	1	0	300 ...	0	12	0
20 ...	0	1	0	450 ...	0	16	6
50 ...	0	1	0	600 ...	1	2	6
100 ...	0	1	0	800 ...	1	18	0
200 ...	0	4	6	1,000 ...	2	5	0

Under the value of—	£	s.	d.
1,500 ...	3	7	6
2,000 ...	4	10	0
3,000 ...	4	13	9
4,000 ...	4	17	6
5,000 ...	5	5	0
6,000 ...	5	12	6
7,000 ...	6	0	0
8,000 ...	6	7	6
9,000 ...	6	15	0
10,000 ...	7	2	6
12,000 ...	7	10	0
14,000 ...	7	17	6
16,000 ...	8	8	9
18,000 ...	9	0	0
20,000 ...	9	11	3
25,000 ...	10	6	3
30,000 ...	11	5	0
35,000 ...	12	3	9
40,000 ...	13	11	3
45,000 ...	15	0	0
50,000 ...	16	7	6
60,000 ...	17	16	3

Under the value of	£	s.	d.
70,000 ...	20	12	6
80,000 ...	23	8	9
90,000 ...	26	5	0
100,000 ...	29	1	3
120,000 ...	30	9	6
140,000 ...	33	5	9
160,000 ...	36	2	0
180,000 ...	38	18	3
200,000 ...	41	14	6
250,000 ...	44	10	9
300,000 ...	46	17	6
350,000 ...	49	4	6
400,000 ...	51	11	3
500,000 ...	53	18	3
For every additional £100,000, or any fractional part of £100,000, a further and additional fee of ...	4	13	6

Duplicate and Triplicate Letters of Administration, &c.

For every duplicate and triplicate Letters of Administration when the Personal Estate is under £300 or any sum less than £300, the same fee as on a first Grant of Letters of Administration under the same sum.			
For every duplicate and triplicate Letters of Administration when the Personal Estate is of the value of £300 and upwards	0	12	6

Exemplifications.

For every exemplification of Letters of Administration	1	1	0

Administrations de bonis non or cessate.

	£	s.	d.
For every Grant of Letters of Administration *de bonis non* or cessate, upon which no stamp duty is payable, when the Personal Estate is under £300 or any smaller sum, the same fee as on a first Grant under the same sum.			
When the Personal Estate is of the value of £300 and upwards	0	12	6

Additional Security.

For noting on the Grant of Letters of Administration with or without Will annexed, and on the Act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

Searches and Inspection of Wills, &c.

For every search for Will or Grant of Letters of Administration or any document filed in a District Registry, including the looking up and inspecting an original Will before the same is registered, or a registered copy of a Will or an Administration Act	0	1	0
For every third Will or Administration Act looked up to in addition to the above ...	0	1	0
For looking up and inspecting an original Will after the same is registered in addition to the fee for the search	0	1	0
For looking up and producing any document filed in a District Registry other than an original Will or Administration Act ...	0	1	0
For a search for a Will or Grant of Letters of Administration, and for reading the Will when the party applying is unable or unwilling to search for or read the same:			
For the search of each year or part of a year	0	0	6

	£	s.	d.
For reading the Will:			
If twenty folios of ninety words each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each ...	0	1	0

Searches for former Grants.

For every search by an officer of the Principal Registry or by an officer of a District Registry, in order to ascertain whether any Probate or Grant of Letters of Administration has already issued, or any application has been made for a Grant of Probate or Administration, as under:—

For every full year or part of a year which has elapsed since the deceased's death	0	0	6

In case it be requisite to extend the search to one or more other District Registries, a similar additional fee for the search in each of such Registries.

Special and Limited Grants.

For every special or limited Grant of Probate or Letters of Administration with or without Will, annexed, in addition to the ordinary fees as under:—

If the Personal Estate is under the value of £20, 1s. per folio of seventy-two words each on the bond, on the Act, and on the Grant of Probate or Letters of Administration.

If the Personal Estate is of the value of £20 and upwards, 2s. per folio of seventy-two words each on the bond, on the Act, and on the Grant of Probate or Letters of Administration.

	£	s.	d.
Whenever the Personal Estate to be placed in possession of, or dealt with by, the Executor or Administrator, by means of a special or limited Grant of Probate or Letters of Administration, exceeds in value the sum of £20, the fee of 2s. per folio of seventy-two words shall be payable on the Bond, on the Act, and on the Grant, although the Personal Estate be sworn under £20.			

Notation of Domicile.

For noting on a Probate or on Letters of Administration, with or without Will annexed, that the Testator or Intestate died domiciled in England	0	5	0

Office Copies and Extracts.

For every office copy or Extract of a Will, or Probate, or Administration Act, or of any document filed or deposited in a District Registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	6
If the Will or other document is 200 years old and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	9
If the office copy of a Will or any part of a Will or other document is required to be made fac-simile, and such Will or part of a Will or other document is two folios of ninety words in length or under, in addition to the fee for the copy	0	1	0
If exceeding two folios of ninety words, for every additional folio or part of a folio	0	0	6

	£	s.	d.
For copies of Wills and other Documents in Foreign Languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies			
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words and collating):—			
If twenty folios of ninety words or under	0	10	0
For every additional folio or part of a folio	0	1	0
For office copy of a Will, Minute, Order, Decree, or any Document under Seal of the Court for which no other fee is payable:—			
For the Seal in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings, and armorial bearings, &c., such fee as shall be determined by the District Registrar in each particular case.			

Collating Documents.

For collating copy of a Probate and Will, or copy of Letters of Administration with or without the will annexed, or any other instrument to be filed or deposited in a District Registry, or for collating any copy or instrument with an original document already filed or deposited in a District Registry, including the District Registrar's certificate in verification thereof.			
If ten folios of ninety words each, per folio	0	2	6
If above ten folios of ninety words each, per folio	0	0	3
If there is any pencil writing copied or the copy or any part thereof is fac simile in addition to the above fees:			
If such pencil writing or fac simile copy is two folios of ninety words in length or under	0	0	6

	£	s.	d.
For every additional folio or part of a folio	0	0	3

Attendances.

For attendance with any book or original document within three miles of the District Registry	1	1	0
For the second and each subsequent attendance at the same place within fourteen days ...	0	10	6
For attendance with books or original documents within three miles of the District Registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance at the same place within fourteen days, for each book or document besides the first ...	0	2	6
For each day's attendance with any book or original document beyond the distance of three miles from the District Registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents beyond the distance of three miles from the District Registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0

The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.

District Registrar's Minute.

For every District Registrar's Minute ...	0	2	6

Filing.

For filing every affidavit or other document brought into and deposited in a District

	£	s.	d.
Registry, except the oaths for executors, administrators, or administrators with the Will, the first Administration Bond and the Testamentary Papers in respect of which Probate or Administration with Will annexed is granted	0	2	6
For filing every Exhibit	0	1	0
For filing in a District Registry any notice required to be sent there from the Principal Registry	0	0	6
For filing in the Principal Registry any notice required to be sent there by a District Registrar	0	0	6

Caveats.

For the entry of every Caveat	0	1	0
For each notice of such Caveat to the Principal or to any District Registry	0	1	0
For subducting a Caveat	0	1	0
For notice to the Principal Registry or to any District Registry to which notice of a Caveat has been sent of its having been subducted	0	1	0

Receipts for Papers.

For every receipt for documents left in a District Registry	0	1	0
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Deposit of Wills.

For depositing every Will of a person deceased in a District Registry for safe custody ...	0	10	6

Bonds.

For superintending and attesting the execution of a Bond	0	1	6

	£	s.	d.
If not completed on one occasion, for each subsequent attestation	0	1	0

Oaths.

For every oath administered by a District Registrar or by a Commissioner authorised to administer oaths in the District Registry to each deponent	0	1	0
For marking each Exhibit	0	1	0

Alterations in Grants.

For making alterations in Grants of Probate or Letters of Administration in pursuance of an order of one of the Registrars of the Principal Registry	0	2	6

Notations.

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Certificates.

For every Certificate under the hand of a District Registrar for which no other fee is payable	0	2	6

Fiats.

For the fiat of a District Registrar as to the form in which any Will or Codicil is to be registered	0	5	0

	£	s.	d.
For noting on a testamentary paper that Probate thereof is refused	0	5	0

Notices.

For every Notice required to be sent to the Principal Registry for which no other fee is payable, except Notices required by Rule 82	0	1	0

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